

(2015) 08 DEL CK 0006

In the Delhi High Court

Case No : Writ Petition (C) 7769/2015, CM No. 15345/2015, W.P. (C) 7793/2015, CM No. 15442/2015, W.P. (C) 7828/2015, CM No. 15546/2015, W.P. (C) 7880/2015 & CM No. 15815 of 2015

Akash Kumar and Others

APPELLANT

Vs

All India Institute of Medical Sciences and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 152 DRJ 316

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Maninder Singh and Sermon Rawat, for the Appellant; R.K. Gupta and Sanjiv Lalwani, Registrar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sahai Endlaw, J—All these petitions concern admission to the Master of Science (M.Sc.) (Nuclear Medicine Technology) programme of the respondent All India Institute of Medical Sciences (AIIMS) for the Academic Year 2015-2016.

2. As per the Prospectus published by the respondent AIIMS for admission to the said programme,

(a) the total number of seats in the said programme are six (06) of which three (03) are unreserved, one (01) is reserved for Scheduled Castes (SC) and two (02) are reserved for Other Backward Classes (OBCs); over and above the same there is one (01) seat for AIIMS candidate (in - service) in General Category;

(b) the academic session commences on 1st August every year and the selected candidates have to join the course on or before 30th September of the year of admission;

(c) the admission requirement is of, B.Sc. Degree in Nuclear Medicine from a recognized University or a B.Sc. Degree with Physics / Chemistry / Mathematics

from a recognized University or a B.Sc. in allied/related subject i.e. Radio Diagnosis/Radiotherapy from a recognized University or a B.Sc. in Life Sciences with Physics as a subject from a recognized University;

(d) Note 2 at the end of Chapter-6 titled "Admission Requirements" is inter alia as under:-

"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 with requisite percentage of marks and subjects within 5 (five) days from the date of declaration of results of Entrance Examination failing which their performance at the Entrance Examination will not be considered.

- All such candidate can submit certificate of Registration as a Nurse and Midwife from the Indian Nursing Council / State Nursing Council at the time of joining if they are selected."

(e) admissions are to be made entirely on the basis of performance of candidates in the Entrance Examination with the minimum cut-off of 50% in the Competitive Entrance Test as a condition of eligibility;

(f) the method of counselling is of calling candidates equal to eight times the number of seats and the order of counselling being General / ST / SC / OBC and the counseling being done strictly by combined merit list starting from Rank No. 1 and the candidates in order of merit being entitled to exercise choice of subject according to availability of seats;

(g) Clause -3 of Chapter-9 titled "Procedure to Apply" is as under:-

"3. Attested copies of the following certificates / documents should be submitted to the Registrar, Academic Section AIIMS, within five days from the date from declaration of Entrance Examination results by the successful candidates."

(h) Clauses-16 & 23 of Chapter-11 titled "Important Instructions" are as under:-

"16. The decision of the Director of the Institute shall be final in the matter of selection of candidates for admission to the above courses and no appeal shall be entertained on this subject."

"23. The rules are subject to change in accordance with the decision of the Institute taken from time to time."

(i) The date of Entrance Examination was 4th July, 2015 and the expected date of declaration of examination results was 8th July, 2015.

3. The result of the Entrance Examination held for admission to the subject course was declared by the respondent AIIMS on 8th July, 2015. The same also

provided as under:-

"Instructions

1. Candidates are required to submit attested photo- copies of the requisite documents in support of their claims in respect of educational qualifications, marks, community, date of birth etc. to the Registrar (Academic) within five days from the date of declaration of result, failing which their candidature will be cancelled and the seat will be offered to the candidate next on the merit list."

4. Within 5 (five) days thereof, none of the candidates as per the merit list prepared of the said result and entitled to admission could submit the proof of fulfilling the admission requirement of having passed examination of B.Sc. as the result of the B.Sc. examination till then by most of the Universities, had not been declared so much so that even the respondent AIIMS till then had not declared the result of its own B.Sc. programme examination. From the facts which have come before this Court, it also appears that of the wait-listed candidates also, only the petitioner in W.P.(C) No. 7769/2015 Akash Kumar who had passed his B.Sc. Examination in the year 2014 (and who claims that he had not participated in the admission process of the said year, i.e. 2014-15, only for the reason of the said requirement of producing the proof of passing the B.Sc. examination within 5 (five) days of declaration of the result of the Entrance Examination) was able to submit the said proof.

5. The respondent AIIMS on its part, did not start the admission process after the expiry of 5 (five) days from the declaration of result and did not admit the said Akash Kumar also. Presumably, respondent AIIMS was waiting for the declaration of result of B.Sc. examination.

6. The four petitioners in W.P.(C) No. 7828/2015 namely Sh. Dhirendra Jaiswal, Ms. Bhawna Singh, Sh. Mukesh Kumar and Sh. Rahul Singh, who have done their B.Sc. course from the respondent AIIMS itself, earlier filed W.P.(C) No. 7275/2015 contending that they, though entitled to admission as per the merit list prepared of the result of the Entrance Examination, were being denied admission owing to their being unable to produce the result of the B.Sc. Examination and which result of B.Sc. Examination was to be declared by the respondent AIIMS itself. It was further their contention that the respondent AIIMS could not on the one hand delay the declaration of the result of B.Sc. Examination and on the other hand deny admission to the M.Sc. programme on the said basis.

The said writ petition came up before this Court first on 31st July, 2015 when it was informed that the result of the B.Sc. Examination had been declared by the respondent AIIMS on 30th July, 2015 and the admission process was to start from 1st August, 2015. Notice of the said writ petition was issued and the respondent AIIMS directed to, without prejudice to the rights and contentions of the parties, either in the admission process consider the petitioners and if petitioners were found entitled, to admit them or to not go ahead with the

admission process. Thereafter, when the said writ petition was listed on 3rd August, 2015 the counsel for the respondent AIIMS informed that of the four petitioners therein, the petitioners no.1,2&3 had already been selected and the name of the petitioner no.4 Rahul Singh was on the waiting list, to be considered for admission at an appropriate stage. Accordingly, the said writ petition was disposed of.

7. Of the present four petitions, W.P.(C) No. 7769/2015, W.P.(C) No. 7793/2015 and W.P.(C) No. 7828/2015 came up before this Court first on 17th August, 2015 when the same were adjourned to 18th August, 2015 to enable the counsel for the respondent AIIMS to take instructions. On 18th August, 2015, it was informed that another petition filed by another candidate was listed for the following day and accordingly the said three petitions were also adjournment to 19th August, 2015. On 19th August, 2015, the counsels for all the petitioners and the counsel for the respondent AIIMS were heard and the matter posted to today for orders. Owing to the date prescribed for commencement of the academic session having already lapsed and otherwise also, need for counter affidavit was not felt.

8. The sole petitioner in W.P.(C) No. 7769/2015, Akash Kumar belongs to the Scheduled Caste for which one (01) out of the six (06) seats is reserved and is first on the waiting list for admission in the said category. His contention is that the SC candidate namely, Ms. Varsha (petitioner in W.P.(C) No. 7880/2015), entitled to admission as per the merit list of the result of the Entrance Examination having failed to, within five (05) days of the declaration of the result of the Entrance Examination, submit the proof of having passed the qualifying examination of B.Sc., he being first on the merit list ought to have been admitted.

9. Per contra, it is the contention of Ms. Varsha, petitioner in W.P.(C) No. 7880/2015, that she has done her B.Sc. from Indira Gandhi National Open University (IGNOU) which has declared the result of the B.Sc. Examination only on 7th August, 2015 and which she has passed and that since her inability to produce the proof of having passed the qualifying examination within the prescribed time was entirely beyond her control, she should not be denied admission. She claims to have deposited the proof of having passed the qualifying examination with the respondent AIIMS on 12th August, 2015.

10. Mr. Kartik Saroha, the sole petitioner in W.P.(C) No. 7793/2015 belongs to OBC category for whom two (02) of the six (06) seats are reserved and as per the merit list of the result declared of the Entrance Examination is entitled for admission. He has also done his B.Sc. from IGNOU which declared the result thereof on 14th August, 2015. He also contends that he should not be denied admission.

11. The grievance of the four petitioners in W.P.(C) No. 7828/2015 and who had earlier filed W.P.(C) No. 7275/2015 supra and of whom petitioner no.1 Dharendra Jaiswal belongs to the OBC category, petitioner no.2 Ms. Bhawna Singh belongs

to the General Category and petitioner no.3 Mukesh Kumar and petitioner no.4 Rahul Singh belong to the OBC category and who have done their B.Sc. from the respondent AIIMS itself and whose result was declared on 30th July, 2015, is that:-

- (i) notwithstanding being entitled to admission they are not being admitted;
- (ii) of the said petitioners, petitioner no.1 Dharendra Jaiswal (OBC), as per the merit list prepared of the Entrance Examination is entitled to admission in the OBC category;
- (iii) petitioner no.2 Ms. Bhawna Singh (General Category), as per the merit list prepared of the Entrance Examination is entitled to admission;
- (iv) petitioner no.3 Mukesh Kumar, though an OBC, as per the merit list prepared of the Entrance Examination is entitled to admission on merits and not in the OBC category;
- (v) petitioner no.4 Rahul Singh is first on the waiting list for admission to the OBC category;
- (vi) that the petitioners no.1,2&3 should be admitted as per their merit and the petitioner no.4 Rahul Singh (OBC) though in the waiting list of OBC should be admitted instead of Kartik Saroha (OBC) petitioner in W.P.(C) No. 7793/2015, because while the petitioner no.4 Rahul Singh was able to submit proof of passing the qualifying examination on 30th July, 2015 i.e. before the commencement of the academic session on 1st August, 2015, Kartik Saroha could submit proof of having passed the qualifying examination only on 14th August, 2015 i.e. after the commencement of the academic session; and,
- (vii) reliance was placed on, (i) Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, AIR 1983 SC 580 : (1983) 1 SCALE 404 : (1983) 3 SCC 517 : (1983) 2 SCR 801 ; (ii) Varun Kumar Agarwal Vs. Union of India (UOI) and Others, (2011) 179 DLT 24 ; and, (iii) Pooja Mohan and Another Vs. Hamdard Institute of Medical Sciences and Research Jamia Hamdard and Others - to contend that the terms of the Prospectus are binding, including on the respondent AIIMS.

12. Per contra, the counsel for the respondent AIIMS under instructions from Dr. Sanjiv Lalwani, Registrar (Academics) of the respondent AIIMS stated that if the Clause in the Prospectus requiring the proof of having passed the qualifying examination within five (05) days of declaration of the result of the Entrance Examination was to be insisted upon, merit would suffer and thus a decision was taken to ask the Examination Branch to send the result of the qualifying examination (B.Sc.) and that this is in consonance with the past practice when also, inspite of a similar Clause in the Prospectus, time to submit the proof of having passed the qualifying examination was extended. It is stated that in the previous years, none had raised a dispute in this regard. It is further stated that the same was deemed permissible since, though the date for commencement of

academic session is 1st August, 2015, but the last date for the admitted candidates to join is 30th September, 2015. However on enquiry whether there is any Clause in the Prospectus or elsewhere in the Rules & Regulations empowering the respondent AIIMS to so extend the date, none could be shown. It is yet further contended that respondent AIIMS interpreted the orders passed in W.P.(C) No. 7275/2015 supra also as permitting so. It was yet further informed that till then, only letters of offer have been sent to some of the candidates in the merit list and no admissions been made.

13. Having given considerable thought to the rival contentions and to the situation as has arisen, I am of the view that now that the result of the qualifying examination of all the candidates have been declared, the respondent AIIMS should make admissions as per the merit list. The reasons which prevail with me for holding so are as under:-

I. All the petitioners, save the petitioner in W.P.(C) No. 7769/2015 (Akash Kumar), are in the same boat, identically placed. In my opinion, once the requirement of the Prospectus was that the proof of passing the qualifying examination has to be submitted within five (05) days of declaration of the result of the Entrance Examination, failing which the performance at the Entrance Examination was not to be considered, no distinction can be carved out between those who had submitted the proof of passing the qualifying examination before 1st August, 2015 being the date of commencement of the academic session and those who submitted the proof of passing the qualifying examination after the date of commencement of the academic session. Once, as per the Clause in the Prospectus the right to be considered was forfeited, the right of all who so failed to submit the proof of passing the qualifying examination within the prescribed time stood and once the right is so forfeited, it matters not whether the proof of passing the qualifying examination was submitted before or after the date of commencement of the academic session. The date of commencement of academic session has no bearing once the right to be considered for admission was forfeited. Supreme Court in *Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh*, AIR 2009 SC 2745 : (2009) 123 FLR 435 : (2009) 10 JT 352 : (2009) 14 SCC 793 : (2010) 1 SCC(L&S) 463 : (2009) 11 SCR 710 : (2010) 1 SLJ 262 : (2009) 5 SLR 476 : (2009) AIRSCW 5467 : (2009) 5 Supreme 665 held that principle underlying the guarantee of Article 14 is that all persons similarly placed shall be treated alike, both in privileges conferred and liabilities imposed. Again in *Rajendra Yadav Vs. State of M.P. and Others*, (2013) 2 AD 653 : (2013) 116 CLT 589 : (2013) 137 FLR 239 : (2013) 2 JT 627 : (2013) 2 SCALE 416 : (2013) 3 SCC 73 : (2013) 1 SCC(L&S) 476 : (2013) 2 SCT 732 : (2013) 2 SLJ 120 it was held that the doctrine of equality applies even among persons who are found guilty - persons who have been found guilty can also claim equality of treatment, when all of them are involved in the same incident.

II. As far as the petitioner in W.P.(C) No. 7769/2015 (Akash Kumar) is concerned, though a right had accrued in him, inspite of being in the waiting list,

to be admitted owing to the candidate in the merit list having forfeited the right for consideration as aforesaid but he is not found to have asserted the said right. It is only on 10th August, 2015 i.e. after the date specified for commencement of the academic session that he for the first time wrote to the respondent AIIMS in this regard and filed this petition only on 13th August, 2015 which came up before this Court on 17th August, 2015, by which time the candidate in the merit list (Ms. Varsha) in whose place is seeking admission had already submitted the proof of having passed the qualifying examination. In my view, the said delay on his part disentitles him from being made an exception to the Rule of merit.

III. The principle behind the judgments laying down that the terms and conditions of the Prospectus are binding is that the Rules of the game cannot be changed after it has commenced and that the Prospectus should not be allowed to be changed so as to give advantage to some over others. However here, all except Akash Kumar, as aforesaid are similarly placed. Thus the said principle would have no application.

IV. The Prospectus, though not containing any specific Clause empowering the respondent AIIMS to extend the time prescribed for submission of proof of having passed the qualifying examination, nevertheless vide clauses re-produced hereinabove makes the decision of the Director of the respondent AIIMS final in the matter of selection of candidates for admission and generally provides that the Rules in the Prospectus were subject to change in accordance with the decision of the respondent AIIMS from time to time. The respondent AIIMS having decided in consonance with the practice followed in the previous years, not to enforce the time prescribed for submission of proof of having passed the qualifying examination and to follow the merit list and to which decision no motives or mala fides can be attributed or have been attributed, it is not deemed appropriate to in writ jurisdiction interfere therewith.

V. The Prospectus does not prescribe any date for counselling or for commencement of admissions and is quiet in that respect. The respondent AIIMS admittedly did not commence the admissions immediately after five (05) days of the declaration of the result of the Entrance Examination on 8th July, 2015. The first grievance with respect thereto was made only by filing of W.P.(C) No. 7275/2015 which had come up before the Court on 31st July, 2015. Though the academic session is prescribed to be commencing on 1st August every year but the selected candidates are given the liberty to join the courses on or before 30th September. For this reason also, no error is found in the decision of the respondent AIIMS.

VI. This Court in exercise of jurisdiction under Article 226 of the Constitution of India and which is an equitable jurisdiction would even otherwise be loath to interfere with the decision of the respondent AIIMS as an Academic Institution of Excellence to follow the principle of meritocracy. The meritorious candidates should not be denied their due owing to technicalities and especially when the said technicalities are beyond their control. I have in Association of National

Board Accredited Institutions and Others Vs. Union of India (UOI) and Another, (2011) 178 DLT 322 : (2011) 123 DRJ 324 noticed a plethora of judgments holding that merit based admission/selection to be in national interest and to be in conformity with Article 14 of the Constitution of India and yet further, that right of a meritorious student to get admission in a Post Graduate Course is a fundamental and human right required to be protected by the Courts. Mention, in addition may be made of JandK BOPEE and Others Vs. Sunandani Sharma and Others, AIR 2014 J&K 44 : (2014) 3 JKJ 166 , Rajan Purohit and Others Vs. Rajasthan University of Health Science and Others, (2012) 8 JT 265 : (2012) 8 SCALE 71 : (2012) 10 SCC 770 , Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 , Manoj Kumar Dhaka Vs. Union of India and Others, (2013) 133 DRJ 473 .

VII. The declaration of the result of the qualifying examination is not in the hands of examinees and there is no reason to deny a meritorious candidate admission for the said delay in declaration of the result, especially when the result has been declared well before the date prescribed for joining the course. I have noticed the case law in this regard in Utkarsh Sharma Vs. Union of India (UOI) and Others . The Supreme Court in Asha supra held that where the candidate is not at fault and has expeditiously pursued remedies, the cut off date cannot be used as a technical instrument or tool to deny admission to a meritorious candidate. Following the same a Division Bench of Madhya Pradesh High Court in Shubh Deep Ayurved Medical College Vs. Union of India and Others, (2013) ILR (MP) 2552 : (2013) 3 MPLJ 94 issued direction for extension of cut off date. An interesting discussion in this respect is also to be found in Smt. Sunita Devi Vs. State of Punjab and Another, (2014) 174 PLR 115 : (2014) 2 SCT 262 . Rather, the respondent AIIMS is found to be at fault for prescribing the time for submission of the proof of passing the qualifying examination and by which time, as per its own admissions, even the result of the qualifying examination is not declared by most of the Universities, including itself, and which has forced the respondent AIIMS in the previous years also to extend the said time. The respondent AIIMS would be well advised to consider making the requisite changes in its Prospectus for the ensuing year.

VIII. Once it is found that admissions were not made and cannot be made in terms of the Prospectus, it is all the more necessary that in directing the admissions to be now made, the principle of merit should be strictly followed. This Court, in exercise of powers under Article 226, is to be substantial justice and this course of action is deemed just and proper in the facts and circumstances.

IX. There is no basis for the contention of the counsel for the petitioners in W.P. (C) No. 7828/2015 that the maximum time to which the date for submitting proof of having passed the qualifying examination could be stretched is still 31st July, 2015. Once the candidates are required to join the course on or before 30th

September, 2015, it matters not that the date for commencement of the academic session has been artificially / academically fixed as 1st August, 2015. If the said date of commencement of the academic session is to be strictly enforced, none would be entitled to admission.

14. The counsels for the petitioners have also stated that since the merit list prepared of the Entrance Examination shows that no AIIMS candidate (in - service) appeared in the Entrance Examination and the said seat is lying vacant, the same be added to the remaining six (06) seats.

15. The counsel for the respondent AIIMS stated that there is no provision therefor. However on further enquiry it was informed that the said seat would remain vacant and there is no provision for the same being added to the next academic session. The counsels for the petitioners stated that any admittees against the said seat would not claim any concession in fee etc. as may be applicable to the AIIMS Candidate (in service) and would be willing to be admitted to the said seat on the same terms as the other six (06) seats. I had during the hearing enquired that even if the admission against the said seat were to be permissible, whether the admission thereto should be from the candidates in the waiting list in the General Category or in the OBC Category or in the SC Category. Each pressed his own case.

16. No relief to the aforesaid effect has been claimed in any of the petitions and there are no pleadings with respect thereto. For the reasons stated above, the counter affidavit of the respondent AIIMS has also not been called for. Without knowing the full position vis-a-vis the said seat and in the absence of any pleading to the said effect, no direction as sought can be issued. All that can be done is to direct the respondent AIIMS to consider the said aspect.

17. The petitions are thus disposed of with the following directions to the respondent AIIMS

A. To make admissions in terms of the merit list declared on 8th July, 2015.

B. To, in view of the above, consider the changes, if any, required to be made in the Prospectus for the next academic year.

C. To consider whether the one seat reserved for AIIMS candidate (in - service) not filled up can be added to the remaining six (06) seats and, if so, on what basis (prima facie it appears that the admission thereto should be again on merit, irrespective of category). The decision in this regard be taken within a period of ten days from today.

No costs.