

(2020) 01 DEL CK 0642

In the Delhi High Court

Case No : Civil Writ Petition No. 10138 Of 2019

Aman Chhillar And Ors

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Indian Medicine Central Council Act, 1970 — Section 36
Indian Medicine Central Council (Post Graduate Ayurveda Education) Amendment
Regulations, 2016 — Regulation 8, 8(2), 8(2)(iv)

Citation : (2020) 01 DEL CK 0642

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; C. Hari Shankar, J

Bench : Division Bench

Advocate : Md. Imran Kashif, Swastik Dalai, Pankaj Kumar, Virender Pratap Singh Charak, Santosh Prasad Chaurasya, Shubhra Parashar, Kapil Gaur, Archana Pathak Dave, Ankita Chaudhary, Harsh Kaushik, Varun Tandon, Ramesh Singh, Chirayu Jain

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

W.P.(C) 10138/2019

1. Espousing their cause, the petitioners before us, graduate BAMS students, who had sought to apply for Post Graduate Ayurvedic courses, have invoked the extraordinary jurisdiction under Article 226, seeking a writ of certiorari, impugning the notification dated 24th July 2019 issued by Respondent no. 2- the Central Council of Indian Medicine, (hereinafter "the CCIM"), whereby, it is alleged to have, amended the Indian Medicine Central Council (Post Graduate Ayurveda Education) Amendment Regulations, 2016, (hereinafter, "Amended Regulations, 2018") to the extent, it modifies the allocated quotas for state and national students, by reducing the state quota from 85% to 50%, to the admissions to the Post Graduate Ayurvedic courses for the academic year

2019-2020.

2. The Petitioners also seek a writ of mandamus, to retain the allocation of quota between the state and national category students, and to conduct counselling for the petitioners herein.

FACTUAL MATRIX

3. At this juncture, a brief recapitulation of facts, is necessary.

4. The admissions to the Post Graduate Ayurvedic courses is governed by the Indian Medicine Central Council (Post Graduate Ayurveda Education) Regulations, 2016, (hereinafter, called "the Regulations, 2016") which was notified on the 7th of November, 2016, by the CCIM, by virtue of the powers conferred to it under Section 36 of the Indian Medicine Central Council Act, 1970.

5. Regulation 8 of the Regulations, 2016, was substituted by virtue of the Indian Medicine Central Council (Post Graduate Ayurveda Education) Amendment Regulations, 2018, (hereinafter, "Amended Regulations, 2018") which were notified on the 7th of December, 2018 by the CCIM. The said substituted Regulation 8, reads as follows:

"8. Mode of admission.-(1) A person possessing the degree of Ayurvedacharya (Bachelor of Ayurveda Medicine and Surgery) from a recognised University or Board or medical institution specified in the Second Schedule to the Act and enrolled in Central or State register of Indian System of Medicine shall be eligible for admission in the post-graduate courses.

(2) (i) There shall be a uniform entrance examination to all medical institutions at the post-graduate level namely, the All India AYUSH Post Graduate Entrance Test (AIA-PGET) for admission to post-graduate course in each academic year and shall be conducted by an authority designated by the Central Government: Provided that the said All India AYUSH Post Graduate Entrance Test (AIA-PGET) shall not be applicable for foreign national"s candidates.

(ii) In order to be eligible for admission to post-graduate courses for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the "All India AYUSH Post Graduate Entrance Test (AIA-PGET)"held for the said academic year: Provided that in respect of-

(a) candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum marks shall be at 40th percentile;

(b) candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum marks shall be at 45th percentile for the General Category and 40th percentile for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. Explanation.-The percentile shall be determined on the basis of highest marks secured in the all India common merit list in the All India AYUSH Post Graduate Entrance Test (AIA-PGET): Provided further that when sufficient number of candidates in the respective

categories fail to secure minimum marks in the All India AYUSH Post Graduate Entrance Test (AIA-PGET), as specified above, held for any academic year for admission to post-graduate courses, the Central Government in consultation with the Council may at its discretion lower the minimum marks required for admission to post-graduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for that academic year only.

(iii) An all India common merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the All India AYUSH Post Graduate Entrance Test (AIA-PGET) and the candidates, within the respective categories, shall be admitted to post graduate course from the said merit lists only.

(iv) The seat matrix for admission in the Government, Government-aided Institutions and Private Institutions shall be fifteen per cent. for the all India quota and eighty-five per cent. for the States and Union territories quota.

(v) The designated authority for counseling for all admissions to post-graduate course in all Ayurveda educational institutions in the States and Union territories including institutions established by the State Government, University, Deemed University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union territory in accordance with the relevant rules and regulations of the concerned State or Union territory Government, as the case may be.

(vi) The counseling for all admissions to post-graduate course for seats under the all India quota as well as for all Ayurveda educational institutions established by the Central Government shall be conducted by the authority designated by the Central Government.

(vii) No candidate who has failed to obtain the minimum eligibility marks as specified above shall be admitted to post-graduate course in the said academic year.

(viii) No authority or institution shall admit any candidate to the post-graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Council forthwith.

(ix) The authority or institution which grants admission to any student in contravention of the aforesaid criteria or procedure shall be liable to face action in terms of the provisions of the Act.

(3) The sponsored candidates shall also be required to possess the percentile of marks specified in clause (ii) of sub-regulation (2).

(4) Change of subject shall be permissible within a period of two months from the date of admission, subject to availability of vacancy and guide in the

concerned department."

(Emphasis supplied)

6. Pursuant thereto, the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), on 12th April, 2018 wrote to all the colleges offering Under Graduate and Post Graduate courses, stating that

"The seat matrix for admission in the Government-aided Institutions and Private Institutions shall be fifteen per cent, (15%) for the all India quota and eighty - five percent (85%) for the States and Union territories quota. This is applicable for both UG & PG seats of AYUSH systems."

7. In May, 2019 the All India Ayush Post Graduate Entrance Test (hereinafter, the "AIAPGET"), conducted by the National Testing Agency, was notified, and the Information Bulletin published, for admissions to the Post Graduate courses for the academic year 2019-2020.

8. The petitioners, all graduate students of the BAMS course (Bachelor in Ayurvedic Medicine & Surgery), applied for the AIAPGET, were issued their respective admit cards on 30th, June, 2019 and appeared for the same, on the 14th of July, 2019.

9. As per the Information Bulletin governing the AIAPGET for admissions to the Post Graduate courses for the academic year 2019-2020, Clause 19 stipulated that the counselling for the state quota seats would be carried out by the counselling authorities of the concerned states/UTs/Universities based on the AIAPGET merit, choice of subject, fulfilment of eligibility criteria, guidelines, the domicile criteria, applicable reservation policies, and any other such criteria.

10. The CCIM, vide notification dated 24th of July, 2019 notified the Amended Regulations, 2019, impugning which, this writ petition has been filed, whereby proviso to clause iv, of sub-regulation 2 of Regulation 8 was added, which merits reproduction as under:

"Provided that-

(a) the all India quota for admission in the Government and Private Deemed Universities shall be hundred per cent.;

(b) those Universities and Institutes which are already having more than fifteen per cent, all India quota seats shall continue to maintain that quota;

(c) five per cent, of the annual sanctioned intake capacity in Government or Government-aided Institutions shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), based on the merit list of 'All India AYUSH Post Graduate Entrance Test (AIA-PGET). In respect of such candidates with benchmark disabilities the minimum marks shall be at 45th percentile for General Category and 40th percentile for Schedule Castes, Schedule Tribes and Other

Backward classes.

Explanation:- For the purposes of this clause, the "Specified Disability" contained in the Schedule to the Rights of Persons with Disabilities Act, 2016(49 of 2016) is specified in Appendix 'A' annexed to these regulations and the eligibility of candidates to pursue a course in Indian systems of medicine with specified disability shall be in accordance with the guidelines specified in Appendix 'B' to these regulations, and if the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability to candidates, the seats shall be included in the annual sanctioned .seats for the respective category."

(Emphasis supplied)

11. In pursuance to the aforesaid notification and Amended Regulations, 2019, the Ministry of AYUSH wrote to Respondent No. 3 - Guru Gobind Singh Indraprastha University (hereinafter, "GGSIPU") on 3rd September, 2019, in light of the Amended Regulations, 2019, saying that "those Universities and Institutions which already have more than 15% All India Quota seats shall continue to remain the same. Moreover, The All India Quota seats for the Post Graduate seats in the Sh. Chaudhary Brahm Prakash Charak Ayurved Sansthan, Khera Dabar, Najafgarh, New Delhi (hereinafter referred to as, "CBPACS") would be 50% of the intake capacity of 29 Post Graduate seats". The Ministry of AYUSH also directed to carry out the First Round of counselling for the State Quota seats of the Post Graduate Ayurvedic course, viz. MD AYUSH, for the Academic Year 2019-2020, for 50%, before the commencement of the Second Round of the All India Quota seats.

12. On 5th September, 2019, GGSIPU brought out a notice, regarding the First Round of counselling for 50% State Quota Seats, to the Post Graduate courses in CBPACS, namely, the MD/MS courses in "Rachna Sharir", "Kayachikitsa", "Rog Nindanevam Vikriti Vigyan" and "Panchkarma and Kriya Sharir", stating that State Quota Seats, only to the extent of 50%, shall be reserved for BAMS students who had graduated from GGSIPU. Further, the notice stated that the GGSIPU would conduct the counselling only for the 50% State Quota Seats, for those candidates who had passed their qualifying degree (BAMS) from CBPACS.

13. Moreover, the Notice annexed two lists, List A and List B, which contained a list of candidates/applicants who had registered themselves with GGSIPU for admission to the Post Graduate Ayurvedic Course, namely MD AYUSH, who had passed their qualifying degree i.e. BAMS from CBPACS and, a list of all candidates/applicants who had registered for the said Post Graduate Ayurvedic Course, respectively. The notice also gave an opportunity to any aggrieved candidate, to resolve discrepancies, if any, before 7th September, 2019 with the GGSIPU.

14. Consequently, another Notice was issued by the GGSIPU, on 7th September, 2019, delineating the schedule for the First Round of the offline

counselling for the 50% State Quota Seats, to the Post Graduate courses at CBPACS, along with conditions, clarifications, terms and conditions, document requirements, etc. The Notice stated that only those candidates who had passed the qualifying examination of BAMS from GGSIPU would be eligible to participate in the said offline counselling.

15. The GGSIPU in continuation of the notice dated 5th September, 2019, on 9th September, 2019, issued an additional notice annexing the merit list of candidates registered with GGSIPU who sought admission to the Post Graduate Ayurvedic courses in CBPACS, who were held to be eligible for the First Round of the offline counselling for the 50% State Quota Seats, which was to be held on 11th September, 2019. The details pertaining to the petitioners, found in the merit list are as follows:

Sr. No.

GGSIPU Application Seq. No.

Name of the Applicant

Gender

Region/State

Category

PH/PWD

Defence

Graduation Institute (passed BAMS from)

Internship

AIAPGET Roll No (1910100...)

AIAPGET T 2019 marks

AIAPGET 2019 Percentile

AIAPGET Rank T2019

13

442679

Aman Chillar

M

Delhi

OBC

N

N

CBPACS

Y

00971

275

96.1327881

538

49

512025

Sujata Kumari

F

Delhi

SC

N

N

CBPACS

Y

14102

212

82.6044771

2496

22

503311

Shubham Sharma

M

Delhi

G

N

N

CBPACS

Y

05924

267

94.8991614

714

38

510200

Sumit

M

Delhi

SC

N

N

CBPACS

Y

14141

234

88.2528242

1685

16

510365

Deeksha

F

Delhi

G

N

N

CBPACS

Y

14140

274

95.9733869

575

23

548219

Advait Sharma

M

Delhi

G

N

N

CBPACS

Y

11676

267

94.8991614

716

43

548334

Vishwas Deep Biswas

M

Delhi

SC

N

N

CBPACS

Y

03169

227

86.4924804

1929

21

464829

Nivedita Khurma

F

Delhi

G

N

N

CBPACS

Y

16442

267

94.8991614

709

15

484003

Jeetika Duggal

F

Delhi

G

N

N

CBPACS

Y

10974

274

95.9733869

572

12

512056

Bhushra Praveen

F

Delhi

G

N

N

CBPACS

Y

14104

277

96.5763393

492

16. Subsequently, the First Round of the offline counselling took place on 11 th September, 2019, and the petitioners failed to secure seats in the Post Graduate Ayurvedic Courses in the CBPACS, and thus, feeling aggrieved, have invoked the writ jurisdiction of this court.

RIVAL SUBMISSIONS

17. We have heard, at length, counsel for the Petitioners, Mr. Imran Kashif as well as, Mr. Virender Pratap Singh Charak, Senior Panel Counsel for the Union of India, Ms. Archana Pathak Dave, counsel for Respondent no. 2, CCIM, Mr. Ramesh Singh, Standing Counsel, GNCTD and Mr. Harsh Kaushik for Respondent no. 3, CBPACS.

18. Arguing for the petitioners, Mr. Imran Kashif advances the following contentions:

a. The allocation of seats, between the All India Quota and State Quota, is enshrined in the Amended Regulations, 2018, to be 15% to 85%. The counsel draws our attention to Explanation (iv) of Regulation 8 to buttress the same.

b. The seats under the All India Quota, in the Respondent-4 institution, CBPACS, as published, was as follows:

i. One seat each of the general category in the courses of "Panchkarma" and "Rachna Sharira";

ii. One seat of the SC category in the course of "Kayachikitsa"; and

iii. One seats of the ST category in the course of "Kriya Sharira".

Therefore, totaling, 4 seats, in the All India Quota seats, of the total of 29 seats in Post graduate Ayurvedic courses at the CBPACS, therefore amounting to 15% of the total seats.

c. Axiomatically, thus, the seats falling under the State Quota category must amount to 85%.

d. The petitioners, on such a premise, appeared for the AIAPGET on 14th July, 2019, results of which were released on 29th July, 2019, but it was only on the 29th of July, 2019 when the Amended Regulations, 2019 were published, pursuant to which, the seat matrix was changed, to allotting 50% of seats to the All India Quota and the State Quota, each, thus acting in detriment to the petitioners' interest, by denying the petitioners an opportunity to participate in the state quota counselling.

e. Pursuant thereto, the notice dated 5th September, and corresponding consequent notices were issued, whereby the State Quota seats were reduced from 85% to 50%, thus leading to the petitioners failing to secure seats, and thus admission, in the Post Graduate Ayurvedic Courses at CBPACS.

f. Further, the impugned notification, arguendo, if it could be termed to valid, could not, at any cost, be applied to the academic year 2019-2020, but could have application only in the next academic year, i.e. 2020-2021.

g. Moreover, the admission brochures of Himachal Pradesh University and the admission brochure issued by the Department of AYUSH, Government of Uttar Pradesh, for Post Graduate Ayurvedic Courses for the academic year 2019-2020, allocate the All India Quota and the State Quota, in the ratio of 15% to 85%, while it was the GGSIPU alone who did not follow the this 15%:85% ratio as mandated by Regulation 8 of the Regulations, 2016 as amended by Amended Regulations, 2018.

h. Parity must be maintained as per the by the GGSPIU, with the other states of Uttar Pradesh, Himachal Pradesh, Maharashtra etc., and the impugned notification dated 24th July, 2019, must be set aside.

i. Further, method and modalities of selection cannot be changed during the admission process, and can only be done from the next academic year, i.e., 2020-2021 and not the current academic year, 2019-2020. The counsel also places reliance on Janhit Abhiyan v. U.O.I Order dated 30.05.2019, in WP (C) 55/2019 to support his argument.

19. Arguing per contra, the counsel for the respondents, submit the following contentions:

a. The Petitioners' claim of reduction of State Quota seats from 85% to 50% is misconceived, on the following grounds :

i. The notice by GGSIPU dated 5th September, 2019, only established/ implements the institutional quota allotment that to only to the extent of 50% of

the State Quota seats. ii. There is a significant difference between reduction of state quota seats to 50% and holding institutional quota allotment for 50% of the seats.

iii. The Supreme Court in *Saurabh Dwivedi v. U.O.I2*, held institutional reservation, with a maximum prescription of 50% to be constitutionally intra-vires.

iv. GGSIPU as well as CBPACS, have continued to conform with the directions of the Supreme Court as per *Saurabh Dwivedi (2017) 7 SCC 626*, by continuing with the institutional reservation to Post Graduate Ayurvedic courses.

v. During the academic years preceding Academic Years 2019-2020, the Post Graduate Ayurvedic courses, had 50% institutional reservation/quota and 50% All India quota.

vi. The proviso (b) to Regulation 8(2)(iv), which is under challenge, clarified that when the institute in the preceding years allocated, more than 15% seats to the All India category seats, could continue to do so, which was, hence, followed, thus, the claim of the petitioners of reduction of State Quota seats, is completely misconceived.

vii. The result of this proviso, does not act in detriment to the petitioners, but rather, since the petitioners fall within the pool of candidates applying through the institutional reservation/quota, such a reduced pool of candidates applying through the institutional reservation acts in the benefit of the petitioners, vis-à-vis the candidates under the State Quota.

viii. The petitioners, now, cannot claim reduction of State Quota seats, if they could not secure a seat through the institutional reservation/quota.

20. The counter affidavit, filed on behalf of Respondent No. 2, CCIM, states that since the inception of the Post Graduate Ayurvedic courses in 2014, there had never been any seats reserved on the basis of 'state quota' for the benefit of students from Delhi at Respondent No. 4 institute, CBPACS and that, the Respondent No.4 has been maintaining only two types of admission categories, i.e., 50% for institutional quota (for the students who have done their undergraduate studies at Respondent No. 4 institute itself) and 50% for all India quota, with no special preference being provided for students domiciled in Delhi.

21. Mr. Ramesh Singh , Standing Counsel, GNCTD, contends that out of the ten petitioners in this writ petition, seven have already secured admission, as of today, either through subsequent rounds of counselling or to other institutions through the State Quota or All India quota seats, and thus this writ petition cannot subsist, qua such petitioners. The short affidavit tendered by Respondent No. 4 - the CBPACS, reiterates the same.

22. The counsel for the Petitioner, concedes to this contention of the Mr. Ramesh Singh, but seeks to contest this writ petition qua, the remaining three petitioners.

23. The counter affidavit of Respondent No. 2, CCIM, as well as the counsel of Respondent No. 2, CCIM, submits that the cut-off date for admissions for the academic year 2019-2020, had already expired. The cut-off date was extended from 31st October, 2019 to 30th November, 2019, and the petitioners, at such a belated stage, cannot claim any relief.

24. The counsel for the petitioners, at this stage, seeks two alternate reliefs, should he merit his claim, either to increase seats in the CBPACS qua the merited students, or to unseat the students admitted through the All India quota to the Post Graduate Ayurvedic courses at the CBPACS.

25. Mr. Ramesh Singh, further contends, that the petitioners have not impleaded such candidates who the petitioners seek to unseat, and thus, any relief at this stage is impermissible.

ANALYSIS

26. At the very outset, the arguments of the petitioners as contested, needs to be seen holistically.

27. The claim of the petitioners emanates from the Amended Regulations, 2018, whereby Regulation 8 of the Regulations, 2016 was substituted. The case of the petitioners is that, the Explanation (iv) of Clause 8(2) of the Regulations, 2016, post notification on 7th December, 2018, determined the allocation of seats between the All India Quota and the State Quota in the ratio of 15% to 85%, and that such allocation must persist and therefore, the proviso (b) being added to Explanation (iv) of Clause 8(2), by means of the Amended Regulations, 2019, reduced the allocation of State Quota seats to 50%. The petitioners, thus seeks to contend that the impugned notification dated 24th July, 2019, is untenable, arbitrary and violative to Article 14 of the Constitution of India, and must be struck down.

28. The primary question thus arises, whether, the impugned notification, notifying the Amended Regulation, 2019, can be struck down.

29. The Hon"ble Supreme Court, in State of T.N. v. P. Krishnamurthy (2006) 4 SCC 517, held that there is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. Paras 15 and 16 of the report, merit reproduction, as thus:

" 15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a sub-ordinate legislation can be challenged under any of the following grounds :-

a) Lack of legislative competence to make the sub-ordinate legislation.

b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

16. The court considering the validity of a sub-ordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity."

30. In the present case, the petitioners, have failed to advance any submission what so ever, in invoking the grounds entailed in para 15 of the report, as propounded by the Hon"ble Supreme Court, as reproduced hereinabove.

31. Moreover, the Regulation, 2016, the Amended Regulations, 2018 and Amended Regulation, 2019 by Respondent No. 2 - CCIM, were notified by virtue of the powers conferred by Section 36 of the Indian Medicine Central Council Act,1970. Since, the parent statute prescribes the power to delegate legislation, which the petitioners, neither challenges nor contests, hence the prayer seeking quashing of the impugned notification is nonest.

32. Moreover, the petitioners" contention of reduction of the seats of the State Quota, is based on the notice of the GGSIPU dated 5th September, 2019, which the respondents contend, does not reduce the state quota, as much as, it implements the institutional quota for the Post Graduate Ayurvedic courses, which as a natural consequence, would only increase the chances of the petitioners, rather than acting in detriment to them.

33. Therefore, at this juncture two fundamental questions arise, one, whether the implementation of institutional quota is tenable, and, two, whether the petitioners could claim any abridgement of any vested right, by such an implementation of the institutional quota.

34. The Constitutional bench of the Hon"ble Supreme Court, Saurabh Chaudhari vs. U.O.I. (2003) 11 SCC 146 has answered the first question, in affirmative.

35. The Apex court, while answering the question if implementation of institutional quota is tenable, after analysing the catena of judgements, as affirmative and intra vires, held the following:

a. The State runs the universities, and exhausts considerable revenues to impart medical education to the students of the state. Moreover, the students securing

admissions in the postgraduate courses are, also, required to be paid stipends.

b. Therefore, reservation of some seats to a reasonable extent would not be violative of the equality clause.

c. The criterion for institutional preference had become trite, as it had satisfactorily performed, in most cases in the preceding two decades, and there had been no sufficient material has been brought on record to depart from such a well-established admission criterion.

d. Therefore, it goes beyond any cavil of doubt that institutional preference is based on reasonable and identifiable classification.

e. Thus, there was no reason to depart from the ratio laid down in *Dr. Pradeep Jain v. U.O.I.* (1984) 3 SCC 654, and as a logical corollary thereto, the reservation by way of institutional preference would not to be violative of Article 14 of the Constitution of India.

f. Moreover, in the opinion of the original scheme framed by the Supreme Court in *Dr. Pradeep Jain* (1984) 3 SCC 654, reservation by way of institutional preference, must be confined to 50% of the seats, in public interest.

36. The counsel for the respondent, places reliance on *Saurabh Dwivedi* (2017) 7 SCC 626, which upholds institutional reservation by, in turn, placing reliance on *Saurabh Chaudhari* (2003) 11 SCC 146. In light of *Saurabh Dwivedi* (2017) 7 SCC 626 and *Saurabh Chaudhari* (2003) 11 SCC 146 we find merit in the argument of the respondents, that the mere implementation of the pre-existing institutional quota to the Post Graduate Ayurvedic Courses, only to the extent of 50%, as evident from the notice issued by the GGSIPU on 5th September, 2019, conforming with the ratio as laid down in *Saurabh Chaudhari* (2003) 11 SCC 146 and not circumscribing the periphery as laid down in *Saurabh Chaudhari* (2003) 11 SCC 146, we find absolutely no merit in the petitioners' submission that the Amended Regulations, 2019 are untenable in law or are deemed to be set aside.

37. The second question that falls upon is to answer, is whether the implementation of the institutional reservation, abridges any vested right of the petitioners. The question, thus, begs to answer if any vested right accrued in the first place.

38. The petitioners, sought to contend, though not expressly, that the reduction of the number of State Quota seats allocated, acts as a detriment, since, the notice dated 5th September, 2019, abridges their vested right to the 35% seats, which stood reduced, and hence, was untenable. Thus, the etymology of their vested right accrued from the Amended Regulations, 2018, and hence, the question sublimates to whether the notification dated 7th December, 2018, notifying the Amended Regulations, 2018, accrued any vested right in favour of the petitioners.

39. Justice S.B. Sinha, has answered the question in negative, in *Saurabh*

Chaudhari (Dr.) v. U.O.I. (2004) 5 SCC 618. Para 31 of the report, merits reproduction:

"31. Furthermore, by reason of an advertisement alone, the students did not derive any right far less any vested or accrued right. (See Prafulla Kumar Das v. State of Orissa [(2003) 11 SCC 614 : 2004 SCC (L&S) 121] .)"

40. This issue also stands settled in Pitta Naveen Kumar v. Raja Narasaiah Zangiti (2006) 10 SCC 261. The issue therein, though was with respect to appointments to various Group 1 positions in the State of Andhra Pradesh. The pulse of the issue of existing vested right to a seat/post, is squarely dealt with, and thus Para 32 whereof, merits reproduction as under:

"... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise. By reason of the amended notifications, no change in the qualification has been directed to be made. Only the area of consideration has been increased. Those who were not eligible due to age bar in 2003 became eligible if they were within the prescribed age limit as on 01.07.1999. By reason thereof only the field of choice was enlarged..."

(Emphasis supplied)

41. The extant position that emerges from the reading of Saurabh Chaudhari (Dr.)⁶ and Pitta Naveen Kumar (2006) 10 SCC 261, is that the petitioners, by no virtue, were entitled to any vested right. The notice issued by GGSIPU dated 5th September, 2019, which implements the institutional reservation/quota, does not strip away any right of the petitioners, which never subsisted in the first place. The institutional reservation does not act in detriment, but acts as advantage to the petitioners, by increasing the chances of the petitioners manifested by reduction in competing pool for the seats at the Post Graduate Ayurvedic Courses at the CBPACS, as all of the petitioners have completed their undergraduate BAMS course from CBPACS. Therefore, what may change is merely the chance of a candidate, which is clearly not a denial to any candidate in participating and competing for the seats to the Post Graduate Ayurvedic courses at the CBPACS.

42. The reading of the aforesaid decisions makes it abundantly clear that there exists no scope of interference by us, especially when there exists no detriment to the cause of petitioners.

43. Another issue before the Hon^{ble} Supreme Court in Saurabh Chaudhari (Dr.) (2004) 5 SCC 618, was whether the institutional quota could be implemented for the current academic year, or as the petitioner therein contended, that it could only be introduced in the subsequent academic year. It was held that there was no infirmity in the implementation of the institutional quota to the current

academic year, and there was no justification as to the petitioner's claim of implementation only from the subsequent academic year. The petitioners before us, in a non-obstante argument, similarly contend that the institutional quota must not be implemented from the academic year 2019-2020 but rather from academic year 2020-2021, which is untenable in light of the pronouncement in *Saurabh Chaudhari (Dr.)* (2004) 5 SCC 618.

44. Moreover, it has been conceded by the counsel for the petitioners that, out of the ten petitioners, seven have been, consequent to the filing of the petition, admitted to the Post Graduate Ayurvedic Courses, and the petition is pressed qua the three remaining petitioners.

45. Consequent relief, thus, prayed by the petitioners, is either to increase seats in the CBPACS qua the three remaining students, or to unseat the students admitted through the All India quota to the Post Graduate Ayurvedic courses at the CBPACS, which has been voraciously contended by the counsel for the respondent.

46. Even such incidental alternate relief cannot be granted at such a belated stage, on two profound reasons.

47. Firstly, it is trite that there cannot be any allocation of/admission to seats beyond the prescribed cutoff date [*Parshavnath Charitable Trust v. All India Council for Technical Education*, (2013) 3 SCC 385], or in contravention to the schedule [*Mridul Dhar v. Union of India*, (2005) 2 SCC 65] of AIAPGET, as prescribed for the admissions to the Post Graduate Ayurvedic Courses for the Academic Year 2019-2020.

48. Secondly, it is trite that, no relief can be provided to the petitioners, especially of unseating such candidates, who were allotted seats, were never impeached by the petitioner in the first place, and thus, providing such a relief would be untenable in law [*Ramrao v. All India Backward Class Bank Employees Welfare Assn.*, (2004) 2 SCC 76; *B. Ramanjini v. State of A.P.*, (2002) 5 SCC 533; *Girjesh Shrivastava v. State of M.P.*, (2010) 10 SCC 707; *Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251;].

49. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this writ petition and the same is hereby dismissed.

CM Appl. No. 41878/2019 (stay)

In view of the order passed in the writ petition, this application is disposed of.