

(2012) 08 DEL CK 0087
In the Delhi High Court
Case No : Writ Petition (C) 4358 of 2012

Isha Karwasra

APPELLANT

Vs

Army Hospital and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2012) 08 DEL CK 0087

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Naushad Ahmad Khan, Mr. Mehbubul Hassan Laskar, Mr. V. Elenchellian and Mr. Syed Aquib Ali, for the Appellant; Ravinder Agarwal, Amit Yadav for respondent no. 1 along with Col. Reena, Capt. Vaishali Sharma, Ankit Rajgar, for Mr. Ashish Kumar, for MCI, Mr. Mohinder J.S. Rupal, for University of Delhi, Mr. Rahul Sharma and Mr. Vivek Singhal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J

1. Present petition has been filed by petitioner under Article 226 of the Constitution inter alia seeking a writ, order or direction in the nature of mandamus to respondent no.1 to admit petitioner in MS (General Surgery) in respondent no.1 college Rule.
2. With the consent of counsel for the parties writ petition is set down for final hearing
3. According to the petitioner admission has been denied to her on account and disposal of arbitrary, capricious and unjustified reasons and only on the ground that the petitioner was unable to produce the original documents at the time of counselling. According to the petitioner the original documents could not have been produced forthwith as the said documents were deposited at Sardar Patel Medical College, Bikaner. Petitioner is aggrieved by the action of respondent no.1

by which admission has been granted to respondent no.4 at rank no.63, who is much below in merit to the petitioner at rank no.42.

4. As per the petition, the petitioner completed her Bachelor of Medicine and Bachelor of Surgery (MBBS) in the year 2009. The petitioner was desirous to pursue higher education in the field of medicine. On 8.1.2012 petitioner appeared in All India Post Graduate Medical Entrance Examination (AIPGMEE) which was conducted by the nodal agency AIIMS. On 15.1.2012 Post Graduate Entrance examination was conducted by respondent no.1, Army Hospital (R&R), Delhi. Being desirous of serving in the Armed Forces Medical Service (AFMS), the petitioner appeared in the entrance examination. The result of Post Graduate Entrance Examination was declared on 27.2.2012. The petitioner was stood at rank 42 in the merit list. On 3.3.2012 result of All India Post Graduate Entrance Examination was declared whereby the petitioner secured 1800 rank. On 30.3.2012 petitioner received a call letter from respondent no.1 for the first round of counselling, which was held on 23.4.2012. The petitioner had secured rank 42 in merit in respect of respondent no.1 Army Hospital (R&R). The petitioner appeared in the first round of counselling on 23.3.2012 with all her original documents.

5. It is the case of the petitioner that prior to counselling respondent no.1 had scrutinized all the original documents and it is only after due satisfaction and scrutiny the petitioner was permitted to appear in the first round of counselling. The petitioner could not secure a seat as per her preferred choice being rank 42 in the merit. On 11.5.2012, petitioner received a call letter from respondent no.1 for the second round of counselling, which was held on 23.5.2012. On 13.5.2012 on the basis of the choice given by the petitioner in the first round of counselling of AIPMT the petitioner was allotted MS (General Surgery) in Sardar Patel Medical College, Bikaner. On 14.5.2012 the petitioner joined MS (General Surgery) at Sardar Patel Medical College, Bikaner. As desired by the College the petitioner deposited all her original documents with the Sardar Patel Medical College and she received a signed receipt from the college as proof of deposit of original documents.

6. Being desirous of serving in the Armed Forces Medical Services, the petitioner appeared in the second round of counselling conducted by respondent no.1 on 23.5.2012.

7. It is the case of the petitioner that she had produced the proof of deposit of all the original documents at Sardar Patel Medical College at Bikaner on 14.5.2012 to respondent no.1 and also furnished attested photocopies of all her original documents. As the petitioner could not meet the cut off, she was not granted admission even in the second round of counselling at respondent no.1.

8. Mr.Khan, learned counsel for the petitioner, submits that even when the petitioner participated in the second round of counselling, petitioner was not disqualified for non-production of original documents as the respondents were

duly satisfied with the proof of deposit of original documents at Sardar Patel Medical College at Bikaner. Mr. Khan further submits that the condition of producing the original documents at counselling was given a go-by by respondent no.1 at the time of second counselling and the petitioner was called for third round of counselling by way of communication dated 6.7.2012, which was held on 14.7.2012, however, the petitioner could not produce the original documents, as the same stood deposited with Sardar Patel Medical College at Bikaner. Counsel next submits that the petitioner spoke to the Dean of respondent no.1, who assured the petitioner that in case, she is offered a seat she will be given 48 hours to submit original documents, however, when the seat was offered to her contrary to the practice she was asked to deposit original documents forthwith. The petitioner sought 48 hours time to submit the original documents, which request was declined although the petitioner produced the receipt as evidence of originals having been deposited at Bikaner. The petitioner was asked by respondent no.1 to make a telephonic call to the college at Bikaner and also asked for confirmation that the documents were lying deposited with the College at Bikaner and would be released in 48 hours. Being a Saturday, which is a holiday, Sardar Patel Medical College was closed and, thus, she could not contact the Dean of the College. The next person, respondent no.4, in line, was, thus, granted admission in MS (General Surgery).

9. Mr.Khan submits that the action of respondent no.1 is arbitrary, capricious and unjustified. The respondents did not act in an just and reasonable manner and the petitioner was denied admission only on the ground that she did not possess the original documents on the same day knowing fully well that petitioner had already taken admission at Sardar Patel Medical College at Bikaner and all the original documents stood deposited. It is submitted that the petitioner assured the respondent no.1 that original documents would be deposited with respondent no.1 on the first working day which was Monday i.e. 16.7.2012. Mr.Khan further submits that non-deposit of originals would have in no way hampered the merit of the petitioner and admission to a less meritorious student at the cost of a highly meritorious student is against the basic tenet of law and against the national interest. Counsel further submits that not granting a reasonable opportunity even upto the first working day to produce the documents is against the principles of natural justice. It is further contended that the only way the petitioner could have procured the original documents would be in case the petitioner had given up her seat at the College at Bikaner without being assured of a seat with respondent no.1. It is also contended that the petitioner could not have sought cancellation of her seat at Bikaner in anticipation of admission and that too only for participation in the counselling.

10. Learned counsel for the petitioner has drawn the attention of the Court to *Asha v. Pt. B.D. Sharma University of Health Science and Ors.*, Civil Appeal No.5055/2012, in support of his plea that institutions must maintain transparency. Relevant portion reads as under:

In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy of improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised.

11. Counsel submits that the petitioner had produced the attested photocopies of all the original documents in addition to the receipt of deposit of documents and assured respondent no.1 that originals would be produced within 48 hours. It is, thus, contended by counsel for the petitioner that the petitioner was denied admission even though she was eligible as per her merit. Counsel further contends that the act of the respondent is a flagrant violation of Article 14, which is Right to Equality; Article 21, which is Right to Life, which also includes Right to Education.

12. It is next contended that it has been consistently held by the Apex Court that "merit is a principle which shall not be displaced with" and deprecating such a principle to retrograde would only cause a casualty to the justice system. In support of his plea that right of a meritorious student of his admission is not only a fundamental right but also a human right, reliance is placed by counsel for the petitioner on a decision rendered by the Constitution Bench of the Supreme Court of India in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, . Relevant portion reads as under:

28.Right of a meritorious student to get admission in a postgraduate course is a fundamental and human right, which is required to be protected. Such a valuable right cannot be permitted to be whittled down at the instance of less meritorious students.

13. Learned counsel for the petitioner contends that in a recent decision dated 10.7.2012 rendered in the case of Asha v. Pt. B.D. Sharma University of Health Science & Ors., reported at 2012 (6) SCALE 287, arising out of SLP(C) No.7440/2012, this Court has reaffirmed in absolute terms that,

the rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly without demur.

14. In support of his plea that a candidate must be given a reasonable time to join the course, reliance is placed by counsel for the petitioner on an order passed by the Apex Court in I.A. 16/2012 in Civil Appeal No.1944/1993, Anand S. Biji v. State of Kerala & Ors. on 23.3.2012 wherein in para 9 the Apex Court has held "Each candidate shall be given 10 days time to join the allotted college and course from the date of allotment of seat". In another order dated 1.6.2012 passed in I.A. Nos.3 & 4 in I.A.No.16 in Civil Appeal No.1944/1993, Anand S. Biji (supra), the Apex Court had granted seven days time for joining the college after allotment of a seat.

15. Attention of the Court is also drawn by counsel for the petitioner to the schedule for PG Online Counselling-2012. In this, dates and duration for fulfillment of admission process have been mentioned. For example the exercising of choices and locking was between 8 to 10 May, 2012, duration being three days; Process of seat allotment-round 1 between 11 th and 12 May, i.e. for two days; Reporting at the allotted institute against th nd round 1 from 13 to 22 May i.e. ten days.

16. Counsel for the petitioner has drawn the attention of the Court to the format of the surety bond to be furnished by each candidate at the time of admission to show that in case a candidate accepts admission and then decides not to join the institute by the stipulated date or if the student leaves the course before its completion or in case the registration of the student is cancelled the surety amount of Rs.5.00 lakhs is to be forfeited. Another stipulation, which is mentioned in this surety bond is that the college would have the right to retain the original certificates of the students till the completion of the course.

17. Learned counsel for the petitioner submits that the aim and objective of retaining the original documents by the college is that the bond can be enforced and the student makes a commitment with the college. It is further contended that the petitioner was duty bound to deposit the original documents with the College at Bikaner. As per the terms of surety bond the college had a right to retain the originals once deposited. It is, thus, contended by counsel for the petitioner that after the petitioner received the call letter dated 6.7.2012, she could not have withdrawn her original certificates as the call letter was tentative, it did not ensure admission and the petitioner was only called for counselling. Attention of this Court is also drawn by counsel for the petitioner to an order dated 17.7.2012 passed by the Apex Court passed in the case of Dr.Isha Karwasra v. U.O.I. & Ors., W.P.(C) 252/2012, wherein I.A. No.5/2012 in I.A.16 in C.A.1944/1993 while passing the following order two weeks time was granted to the applicant to withdraw from the Government Medical College at Baroda and take admission in the College so mentioned:

I.A. No.5/2012 in I.A.16 in C.A.1944/1993

Mr.Doabia, learned senior counsel appearing on behalf of the respondents has given an offer providing admission to the applicant Pankia Mittal in the University College of Medical Sciences, new Delhi in M.D. (Obst. & Gynae.) course. This offer is acceptable to the applicant. The applicant is granted two weeks time to withdraw from the Government Medical College at Baroda and take admission in the college mentioned above.

In view of the above, this application is rendered infructuous and the same is disposed of as such.

18. Learned counsel for the petitioner has also laid stress on having produced the original receipt before respondent no.1 in support of his plea that it was good enough proof that the petitioner was in possession of original documents and

was also proof that the college had accepted the original documents and granted admission to the petitioner .

19. Reliance is also placed by counsel for the petitioner on the case of Asha v. Pt.B.D. Sharma University of Health Sciences and Ors., (supra), more particularly paras 4, 21, 22, 31 and 36, which are reproduced below, in support of his plea that for technical reasons the petitioner cannot be denied admission:

4. Therefore, in our view, though the present appeal arises from very simple facts, yet it raises questions of considerable importance and application. These questions are bound to arise repeatedly not only before this Court, but even before the High Courts. Therefore, it is imperative for us to formulate the questions and answer them in accordance with law.

5. The questions are :-

a) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses?

b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?

c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?

d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this court governing the subject?

21. It is not necessary for the appellant to plead and prove mala fides, misconduct or favouritism and nepotism on the part of the parties concerned. Failure to do the same could be an error, intentional or otherwise, but in either event, we see no reason why the appellant should be made to suffer despite being a candidate of higher merit.

22. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta Vs. State of Chhatisgarh & Anr. [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012], Harshali v. State of Maharashtra and Others [(2005) 13 SCC 464], Dr. Pradeep Jain and Others Vs.

Union of India (UOI) and Others, , Sharwan Kumar and etc. Vs. Director General of Health Services and another, , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , Guru Nanak Dev University v. Saumil Garg and Others [2005 (13) SCC 749], A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, .

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others, ; Chhavi Mehrotra (Miss) Vs. Director General Health Services, ; and Arvind Kumar Kankane. Vs. State of U.P. and Others, .

36. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

ANSWERS

a) The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly and without demur.

b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the

relevant academic year [in terms of the decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extra-ordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefore are recorded by the court of competent jurisdiction.

c) & d) Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment.

Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

21. In support of his plea that in case respondent no.1 had granted 48 hours time to the petitioner to deposit the original documents there was neither any impropriety nor any order or judgment of the Supreme Court would have been violated by them. It is also contended that the respondents have not able to appreciate the spirit of the communication dated 21.6.2012, addressed to them by the Deputy Registrar, Medical University of Delhi. Counsel further submits that respondent no.1 have taken an extremely narrow approach without keeping in mind the doctrine of fairness and principles of natural justice.

22. Mr.Ravinder Agarwal, learned counsel appearing on behalf of respondent no.1, has drawn the attention of the Court to the prospectus, more particularly Claus 11(g) in support of his submission that it was mandatory for all the candidates appearing for counselling to produce all original certificates for verification. It was made clear in the prospectus that candidates without documents in original would not be eligible for selection/counselling process. Clause 11 (g) of the prospectus reads as under:

11. Counselling for allocation of subjects shall be as follows:

(g) The candidates for counselling shall produce all the originals of certificates submitted with the application for verification as applicable. Candidates without

documents in original will not be eligible for selection/counseling process. A candidate appearing for the counselling shall be have the right to chose only from among the available seats in subjects as per his/her merit position. Once a candidate has opted for any subject, he/she will not be allowed to seek any change of subject.

22. In support of his argument that the terms of prospectus are binding and are strictly construed reliance is placed by counsel for respondent no.1 on a decision rendered by a Division Bench of this Court, reported in Varun Kumar Agarwal v. Union of India & ors., reported at 179 (2011) DLT

23. more particularly para 14, which reads as under:

14. Presently we shall refer to certain authorities in the field that

have dealt with sanctity of a prospectus or brochure and the legal impact when it is changed in the midstream. In Dr.M. Vannila v. Tamil Nadu Public Services Commission, 2008 (3) CTC 69, a Division Bench of the High Court of Madras has opined thus:

19.The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, . Following the same, a Divison Bench of this Court has also observed in Rathnaswamy, Dr. A. v. Director of Medical Education (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu (1994 WLR 624). The same principle is reiterated in the case of Dr.M. Ashiq Nihmathullah v. The Government of Tamil Nadu and Ors. reported in 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.

23. Mr.Ravinder Agarwal has further drawn the attention of the Court to the communication dated 6.7.2012, whereby the petitioner was categorically informed that the petitioner should bring with her the MBBS degree, State/MCI registration, Internship completion certificate, Attempt Certificate, Class X Pass certificate for date of birth proof (All certificates in original). Mr.Agarwal further submits that this letter was a prior notice of seven days to the petitioner to produce her documents at the time of counselling. Counsel next contends that this is not an unusual practice as even in the past students have approached respondent no.1 for release of their original documents be it for one day to enable them to attempt counselling in a better institution or of steam of their choice. A sample letter has been filed along with counter affidavit in support of his plea Counsel further submits that it is not the case of the petitioner that the petitioner had applied to the College at Bikaner for release of documents and the request of the petitioner was declined. As far as the plea raised by counsel for the petitioner with regard to reasonable time to deposit the originals is

concerned, counsel for the respondent no.1 submits that the petitioner was bound by the communication dated 21.6.2012. Attention of this Court is also drawn by counsel for respondent no.1 to para 30 of Priya Gupta Vs. State of Chhatisgarh and Others, . Para 30 reads as under:

30. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied strict sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above-stated principles. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned.

i) The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

ii) The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

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iii) After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counseling, in accordance with the Rules.

iv) Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counseling to be conducted by the concerned authority and that college would have no right to make admissions in the current academic year against such seats.

v) The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and

grant of admission to these courses. However, where there is a single Board conducting the state examination and there is a single medical college, then in terms of clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

vi) All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counseling should be the final counseling, as this Court has already held in the case of Ms. Neelu Arora and Another Vs. Union of India (UOI) and Others, and third counseling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

vii) If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counseling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

viii) No college may grant admissions without duly advertising the vacancies available and by publicizing the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex-facie arbitrary and casts the shadow of favouritism.

ix) The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.

24. Mr. Agarwal, counsel for respondent no.1 has also placed reliance on the communication dated 21.06.2012, which was issued by the Deputy Registrar (Medical) to the Dean Academics of the University of Delhi, Faculty of Medical Sciences. In this communication respondent no.1 was granted permission to conduct the third round of counselling (extended counselling) on 14.07.2012 for

allotment of vacant seat, if any, to avoid wastage of PG seats in the army hospital (R&R). Stress is laid by Mr.Agarwal, on the concluding lines of this communication, by which respondent no.1 was to complete the admission process on 14.07.2012 and admissions were to be closed by 15.07.2012 (Sunday) for the sessions 2012-15. Mr.Agarwal, counsel for respondent no.1 submits that in view of the explicit directions of the Deputy Registrar (Medical) University of Delhi, time could not have been granted to the petitioner, to submit her originals by even a day, as admission process was to close on 15.07.2012.

25. Learned counsel appearing on behalf of MCI has drawn attention of the court to regulation 9(3) in support of his submission that the regulation has laid down strict time frame for beginning of the classes and completion of the classes each year and also with regard to the admission process. Counsel for MCI further submits that the admissions are to be done with respect to the sanctioned intake of the seats which are provided and further in case the seat capacity is to be increased, proper procedure is to be followed, as per section 10A of the Medical Council of India Act, 1956. Counsel for the MCI has also submitted that in case an additional seat is granted by this court, the college will not have the necessary infrastructure, to cope up with the same.

26. Counsel for the respondent no.4 submits that respondent no.4 has met all the eligibility criteria, she has been granted admission and she continues to attend the classes. Counsel further submits that at this point of time the admission process has closed and in case admission of respondent no.4 is cancelled / set aside, respondent no.4 will lose a year and a right which has been created in her favour cannot be taken away by the college or the university, keeping in view that she is a bona fide student and there are no malafides alleged against respondent no.4.

27. Counsel for the petitioner in response to the submissions made by counsel for respondents, submitted that respondent no.1 has failed to read the communication of 21.06.2012 in its right perspective. The direction issued to respondent no.1 to complete the admission process by 14.07.2012, did not mean that the principles of natural justice and reasonableness were to be ignored, considering that this was the third round of counselling, it is expected that the students would have submitted its originals in some other colleges as well. Counsel for the petitioner further submits that petitioner should have in fact been granted admission and the admission process could have well been closed on the same day, having regard to the fact that admittedly the petitioner had already got admission in Sardar Patel Medical college at Bikaner and her originals stood deposited there, which would lead only one conclusion that she was in possession of all the original documents and would meet all the eligibility criteria. On the contrary, the respondent no.1 was in unnecessary hurry to complete the admission on 14.07.2012 and granted seat to the next candidate, who was also present.

28. Counsel for the petitioner submits that respondent no.1 has the capacity to

enroll 11 candidates out of which only four students have been enrolled and thus, even in case this court directs the respondent no.1 to admit the petitioner an additional seat would not have to be created and, thus, no prejudice would be caused either to the university or the college or to the respondent no.4. Counsel further submits that in the last year 8 candidates were admitted and thus the infrastructure is already in place. Counsel further submits that there would be no loss of attendance, as the petitioner has been regularly attending the classes at Sardar Patel Medical college in Bikaner and necessary attendance certificate shall be produced by her.

29. I have heard counsel for the parties and considered the rival submissions. The basic facts are not in dispute that the petitioner completed her Bachelor of Medicine and Bachelor of Surgery (MBBS) in the year 2009; on 08.01.2012, petitioner appeared in the All India Post Graduate Entrance Examination (AIPGMEE) which was conducted by Nodal Agency AIIMS. The petitioner also appeared in the Post Graduate Entrance Examination conducted by the Army Hospital (R & R) Delhi and 15.01.2012 and secured 42rank in the merit list. Petitioner could not secure course of her choice in the first and second counselling, although she appeared in the first round of counselling along with her original documents. In the meanwhile petitioner was offered admission in Sardar Petal Medical College, Bikaner on 14.05.2012. Hoping to meet the cut-off, the petitioner participated in the second round of counselling held by the Army Hospital (R&R), but was not successful. Thereafter, petitioner appeared in the third round of cunselling, which was held on 14.07.2012. On this day although the petitioner was eligible, she was denied admission by respondent no.1, as she could not produce her original documents.

30. It is the case of the petitioner that she produced the original receipt evidencing deposit of original documents with Sardar Patel Medical college in Bikaner and also pleaded with respondent no.1 that she would produce the originals on the next working day i.e. 16.05.2012, both 14 and 15May, 2012 being holidays at Bikaner, the respondent no.1 did not heed to her request and granted admission to respondent no.4. It is this act of respondent no.1, which is subject of challenge in this writ petition.

31. Counsel for the petitioner has strongly urged before this court that in repeated judgments, the Apex Court has held that there should be fairness and transparency in the process of admission and further rule of merit cannot be compromised. Reliance has been placed in the case of Asha Vs. Pt. B.D. Sharma (Supra), Dr.Saurabh Choudhury & Ors. Vs. UOI (Supra) and Anand S.Biji V. State of Kerala (Supra).

32. Counsel for the petitioner has also drawn the attention of this court to various orders passed by the Apex Court where joining time between 7 to 10days has been granted, having regard to the fact that a student may have applied in more than one institutions and may have got admissions and deposited original documents elsewhere. Having regard to this problem, in my mind reasonable

time has been granted. The orders of the Supreme Court have been referred to by this court in paragraph foregoing. Reliance has also been placed on the schedule, where joining time has been shown as 10 days for every counselling which has been reproduced above. Counsel for the petitioner has also argued that respondent no.1 should have taken a reasonable interpretation of the communication of 21.06.2012 and should have granted admission to the petitioner on 14.07.2012 itself, the manner other candidate has been allowed on the basis of assurance to deposit the original documents, as the admission would close only on the next working day, which would be 16.07.2012 being Monday and no admission could have been closed on a holiday. While, Mr.Ravinder Agarwal, counsel for respondent no.1 has laboured hard to justify the action of respondent no.1 in not waiting for the original documents, has submitted that petitioner should have made arrangements and the petitioner should have procured original documents in advance from Sardar Patel Medical college in Bikaner and produce the same at the time of counselling on 14.07.2012. It is also submitted that the sanctity of fixing the last date of admission should not be diluted.

33. Counsel appearing for the MCI has submitted that it has been repeatedly held that the last date fixed for grant of admission should not be extended; and further there cannot be any increase in intake for additional seat, in view of section 10A read with Section 10B of the MCI Act and further in case an extra seat is granted, respondent no.1 may not be able to cope up due to lack of infrastructure.

34. I find force in the submissions made by counsel for the petitioner that petitioner is a meritorious candidate and she had secured 42rank in the merit list. Respondent no.4, who has since been granted admission, was placed at 63rank in the merit list. On account of a procedural lapse the petitioner could not have been denied admission when she had met with all the eligibility criteria.

35. I have also perused the surety bond, a copy of which has been placed on record, which suggests that at the time of admission the original documents are to be deposited and the college has a right to retain the same till the completion of the course. There is also force in the submission of counsel for the petitioner that since the petitioner had appeared in the first round of counselling along with all her original documents only then the petitioner would have been called for the second counselling which would show that petitioner had all the relevant original documents in her custody. Although by the second counselling the petitioner had already deposited her original documents with Sardar Patel Medical college in Bikaner yet she was considered for the third counselling on the basis of the original receipt produced by her at the time of second counselling. Thus, it cannot be said that it is an absolute rule that in case a candidate does not produce the original at the time of counselling he/she is to be denied admission. While there is no fault of respondent no.1 in insisting for the originals, the respondent should have granted the petitioner at least minimum one working

day's time to produce the original documents from Bikaner which is at a distance by 8 - 10 hours by road. It was humanly impossible for the petitioner either to have called the Dean of the Sardar Patel Medical college in Bikaner on Saturday and Sunday or to have produced the documents at the same very moment. To say the least the stand of the respondent no.1 was most unreasonable, unjust and highly insensitive.

36. I have also perused the letter issued by respondent no.1 to the petitioner by which she was called upon to produce the original documents at the time of counselling. The last line of this letter of 06.07.2012 reads as under:

5. If selected, you have to complete all formalities and join the course on the stipulated date given to you Subject to fitness in Medical Examination. Your certificates in original will be deposited in this institution as per the direction of Delhi University.

37. If a narrow interpretation is to be given to the communication of 21.06.2012 wherein it was stated that the admission process should be completed by 14.07.2012 then a candidate cannot be even put through medical examination subsequently, and further letter would show that only if a candidate is selected it was a conditional offer, subject to the candidate being selected. The reasonable apprehension of the petitioner can well be appreciated that the petitioner did not want to withdraw her admission or originals from the Sardar Patel Medical college at Bikaner, till she was finally granted admission by respondent no.1.

38. Further I am of the view that the respondent no.1 has misread the letter dated 21.6.2012 and taken narrow meaning of the said communication. Rules of fair play, reasonableness and justice are the pillars of a civilized society. It would be useful to refer to the observations made by the Supreme Court in the case of Canara Bank and Others Vs. Shri Debasis Das and Others, :

13. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled.

39. In my view respondent no.1 mis-read the communication of 21.06.2012 and did not even grant any reasonable time even one working day to the petitioner to submit her originals, the action of respondent cannot be appreciated.

40. Two basic arguments have been raised by learned counsel for the Medical Council of India. The first argument is that in case the petition is allowed it would lead to adding of a seat, and a seat can only be increased by following the procedure laid down u/s 10 A of the Medical Council of India Act; and secondly in case the petitioner is granted admission, the college would not have provided adequate infrastructure, staff, etc. Both the arguments are without any force in view of the fact that in the last year the College has admitted eight candidates as against only four candidates this year, thus, the infrastructure is already in place. The submission with regard to following due process for increasing a seat u/s 10 A of the Medical Council of India Act would not arise in the present case as admittedly at least there are five recognized seats out of which only four seats have been filled up thus one seat is still available.

41. While, neither counsel for the petitioner has alleged any malafide against respondent no.1 nor any malafide stands established, however, I am of the view that in case the action of respondent no.1 is not set aside it will become a tool in the hand of some unscrupulous body or institution who may take advantage if such an act of respondent no.1 is condoned by this Court. No fault can be attributed to the petitioner as she has been denied admission for reasons, which can be termed as unjust and unreasonable, which would result in a meritorious candidate being denied admission to a prestigious institution like respondent no.1. The action of respondent no.1 in declining admission to the petitioner for non-supply of original documents and not granting a reasonable time upto the first working day is bad in law and such an act will not repose confidence in the candidates, who appear for counselling. Accordingly, in the peculiar facts and circumstances of this case, the present petition is allowed. Petitioner be granted admission in MS (General Surgery) in respondent no.1/ college.

42. It is made clear that petitioner will produce the attendance certificate from the college at Bikaner, she will follow the attendance criteria and no benefit will be given to her on account of lack of attendance certificate. It is also made clear that this case will not be treated as a precedent. This order has been passed having regard to the peculiar facts and circumstances. The petitioner will complete all the formalities within four working days from the date of receipt of this order. Accordingly, the writ petition is allowed in the aforesaid terms. Petitioner will approach college at Bikaner and seek release of documents, which shall be done in accordance with law. Copy of the order be given DASTI to counsel for the parties under the signature of Court Master.