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**(2020) 08 J&K CK 0053**  
**In the Jammu And Kashmir High Court**  
**Case No : Writ Petition (C) No. 1195 Of 2020**

Naseem Chauhan

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

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**Date of Decision :** 31-08-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation :** (2020) 08 J&K CK 0053

**Hon'ble Judges :** Rajesh Bindal, J

**Bench :** Single Bench

**Advocate :** K.S. Johal, Karman Singh Johal, F.A. Natnoo, Sheikh Najeeb

**Final Decision :** Dismissed

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## Judgement

Rajesh Bindal, J

1. The petitioner has filed the present writ petition seeking a direction to the official respondents to register her candidature for counseling for admission to MD/MS courses even after the last date fixed for registration i.e. 18.07.2020, in the mopping up round for filling up left over seats for MD/MS courses, had expired. After the writ petition was amended, further direction has been prayed for to change the discipline in which the petitioner was allotted seat i.e. MS Anatomy to MD Pathology or MD Social and Preventive Medicine/Community Medicine. However, the second relief is dependent on the first relief. In case the first is not granted, the second will become infructuous.

2. Mr. K.S. Johal, Learned Senior Advocate appearing for the petitioner submitted that the petitioner is a medical graduate already working as Medical Officer in Jammu and Kashmir. She belongs to ST category. She had appeared in the NEET (National Eligibility Entrance Test) examination and scored 232 marks. In the initial process of admission, she could not make up as the marks secured by her were less than the minimum criteria fixed. However, later on, the minimum marks required for admission to MD/MS courses, were reduced by the Ministry of

Health and Family Welfare, Government of India. For reserved category candidates, to which the petitioner belongs, the marks were reduced to 20 percent for the academic year 2020, hence, the petitioner became eligible to seek admission.

3. The Board of Professional Entrance Examination (for short the 'BOPEE?'), issued Notice No. 40 dated 15.07.2020, clarifying that in the reserved category, the cut off score has been reduced to 230. The candidates who were falling within the revised cut off score and were willing to participate in the mop up round were required to register themselves in the office of the BOPEE at Jammu or Srinagar from 15.07.2020 to 18.07.2020 up to 2:00 P.M.

4. He further referred to another Notification No. 17 dated 15.07.2020 issued by the BOPEE, which provided the schedule of counseling for reserved category candidates securing marks between 318 to 230. The date fixed was 20.07.2020.

5. It is not in dispute that the petitioner could not reach the office of the BOPEE within the period prescribed and get herself registered. It is for the reason that she did not come to know about the schedule in time and further she was suffering from medical ailment. She got her ultrasound for abdomen conducted on 03.07.2020, indicating Gall Bladder Stone. She got herself examined from a doctor on 15.07.2020, who advised her surgery on 19.07.2020. As during the period of COVID-19, surgery could not be conducted without COVID-19 testing, she had to get herself tested for COVID-19 and quarantine during this period. The report was received by her on 18.07.2020, late in the evening. The very next day, she made a representation to the BOPEE, however, to no use. Without wasting any time, on 20.07.2020 she filed the present writ petition. On 22.07.2020, she was allowed to provisionally appear in the counseling, however, her result was directed to be kept in a sealed cover. Vide order dated 29.07.2020, the result in the sealed cover was produced in Court. The same was opened and it was found that the petitioner had been granted admission in MS Anatomy. No one else was the claimant for that seat.

6. In the aforesaid factual matrix, the argument raised is that the petitioner was not at fault as because of medical emergency she was unable to submit her documents within the period granted for mop up counseling. Relevant documents in support of the arguments have been placed on record. It is so provided even in the prospectus that no seat should go vacant. In case seat in MD/MS courses go vacant, the same will be a national loss. There is no other claimant available for that seat. He further referred to a Notification dated 23.07.2020, issued by the BOPEE where fresh schedule for left over seats was fixed for ASCOMS i.e. for the private colleges. That means the last date earlier fixed for admission was not sacrosanct and the same could very well be extended. He further submitted that in one of the clause in the Notification dated 15.07.2020, fixing schedule for mop up counseling, it was mentioned that any vacant seat in the reserved category will go to general category. Even in that category, no one has been admitted.

7. Learned senior counsel for the petitioner further contended that even after completing the entire process of admission, number of seats have remained vacant. Hence, no one will be prejudiced if admission is granted to the petitioner. Merit should be given preference instead of technicalities.

8. On a query by the Court as to what prevented the petitioner to appear in counseling for admission in the vacant seats notified for admission in the private colleges, for which the candidates were to report on 28.07.2020? The answer was that the petitioner already had an order passed by this Court in her favour, hence, she did not participate in that process. In support of the arguments, reliance was placed upon judgment of Supreme Court in AIR 2020 SC 47 titled as S. Krishna Sradha Vs The State of Andhra Pradesh & Ors.

9. In response, Mr. F.A. Natnoo, learned AAG appearing for the BOPEE submitted that admittedly as per the score secured by the petitioner, she was not eligible for grant of admission in the first round. However, later on the Ministry of Health and Family Welfare, Government of India, having reduced the cut off marks in the reserved category to the extent of 20 percent, which had taken the cut off score up to 230, the petitioner who had score of 232, became eligible. To give opportunity to the new eligible candidates the BOPEE had issued Notice No. 40 of 2020 dated 15.07.2020, fixing the time up to 18.07.2020 for registration of the candidates. In response to the aforesaid notice, 97 candidates had applied. The list was notified on 18.07.2020. Even the earlier notice was given due publicity. It was a result thereof that number of candidates had applied. Vide Notice No. 17 of 2020 dated 15.07.2020, schedule for mop up counseling was also notified. In the reserved category to which the petitioner belongs, with reference to the score she had secured, 20.07.2020 was the date fixed.

10. He further referred to clause-5 of the aforesaid notice, wherein it is provided that any seat remaining unfilled in the reserved category will be converted to open merit category after the completion of the counseling on 20.07.2020. It was thereafter that the counseling for open merit category candidates was to be held. It was too late for the petitioner to have approached the court for relief as time fixed had already expired.

11. He further submitted that for registration of her candidature, the petitioner was not required to appear in person, only certain formalities were to be completed. Hence, the claim that because of illness she could not appear, is merely an excuse. In fact, the medical record produced alongwith the petition also does not support the case set up by the petitioner. She got her ultrasound done on 03.07.2020, thereafter, there was nothing. Thereafter she got herself examined from a private doctor 15.07.2020, when date of surgery was given as 19.07.2020. Even, as per the record produced by the petitioner, she had given sample for COVID-19 testing on 16.07.2020. Hence, she had enough time to register for mop up counseling. The schedule fixed for admission is time bound. It cannot be kept open for infinity. There may be other candidates who may have different kinds of excuses for not getting themselves registered within time. If

these are to be considered either by the BOPEE or by this Court, the process of admission will never be over. The schedule so provided is sacrosanct. The judgment referred to by the learned counsel for the petitioner is not relevant in the case in hand as the same does not support the arguments raised.

12. Learned counsel for the newly added respondent submitted that initially he had filed the application as because of interim order passed by this Court, he was not being granted admission, however, later on he being admitted, he does not have any dispute with the petitioner.

13. Heard the learned counsel for the parties and perused the paper book.

14. Some of the facts which have come on record and are not disputed by the learned counsel for the parties are that the petitioner belongs to Schedule Tribes category. She had secured NEET score of 232. In the first round of counseling, her candidature could not be considered as she had secured marks less than the minimum prescribed. However, later on Ministry of Health and Family Welfare, Government of India, had lowered the percentile cut off marks for NEET PG for academic year 2020-21. The same was reduced to 20 percentile for SC/ST/OBC category candidates. As a result, a candidate with score of 230 and above became eligible for admission. BOPEE vide Notice No. 40 of 2020 dated 15.07.2020, invited the candidates to get themselves registered in its office at Srinagar/Jammu from 15.07.2020 to 18.07.2020 up to 2:00 P.M. The petitioner had failed to get herself registered within the period prescribed. On the same day, another Notice No. 17 of 2020 was issued specifying the schedule for mop up round of unfilled seats. As per that schedule, the petitioner was to appear for counseling on 20.07.2020.

15. It may be added here that as provided in the aforesaid notice the candidates, who were not in a position to report physically in the Board office during mop up round of counseling, could send their preference form with ID proof on e-mail to the BOPEE, however, a day in advance. The candidates were also advised to keep their mobile phones always on. Any seat in the reserved category which remained unfilled due to non-availability of eligible candidate, was to be converted to open merit category for which the counseling was scheduled from 21.07.2020 to 23.07.2020. Any reserved category candidate who may not get seat in his/her category, was also eligible to participate in the counseling as open merit category candidate.

16. It is the admitted position on record that the petitioner did not get herself registered for mopping up round of counseling within the period prescribed. To explain the reason there for, the petitioner has annexed with the petition an ultrasound report of her abdomen dated 03.07.2020, from Sahara Diagnostic Centre claiming that the petitioner was diagnosed Gall Bladder Stone. Subsequent thereto, she has produced a prescription from a private doctor dated 15.07.2020, advising her surgery. Tentative date was given as 19.07.2020. The doctor besides others, also prescribed COVID-19 test. As per the report from

Medical Officer Jammu dated ?NIL?, the petitioner was tested for COVID-19 on 16.07.2020. Though, there is no document to establish this fact on record except the pleadings by the petitioner that the aforesaid report was received by her late in the evening on 18.07.2020. The submission was that after the petitioner had given sample for COVID-19 test, she had to remain in quarantine, hence, was not in a position to submit the application. The contention that the petitioner did not have time to get herself registered because of medical problem is not made out from the record produced by her as after notice was issued inviting registration for mop up counselling, the petitioner had enough time to get herself registered upto 16.07.2020.

17. It is also pleaded that the petitioner had filed a representation to the BOPEE on 19.07.2020 but was not considered. She immediately rushed to this Court and filed the writ petition on 20.07.2020. This fact establishes that the case set up by the petitioner that she did not come to know about the notices issued by the BOPEE about mop up counselling, is false as she had been pursuing the matter.

18. The matter was taken up for hearing on 22.07.2020, when this Court passed the following order :

"At the outset, the learned senior counsel was asked as to what relief can be granted in favour of the petitioner at this stage when already the date of counselling scheduled for the reserved candidates upto 230 is over by 20th of July, 2020, submits that inaction on the part of the BOPEE has adversely prejudiced the rights of the petitioner, that too when the petitioner has justified her non-availability on the date of counselling and, thus, the petitioner, by no stretch of imagination, can be deprived petitioner from taking the benefit available to her in terms of the process of admission initiated by the respondents after securing 232 points, i.e., over and above the 230 points secured by the last cut-off candidate. It is submitted that the respondent BOPEE is still in the process of counselling which has started from 19th of July, upto 23rd of July, 2020, but in the meanwhile, with the application of the rules governing the field, they are in the process of utilizing the reserved category seats for open merit candidates, thereby defeating the very object and purpose of the reservation scheme in the process of admission, as guaranteed under the Constitution.

Prima facie, the petitioner has made out a case for grant of interim relief in her favour.

Notice.

Notice waived by Mr. Natnoo, learned Additional Advocate General, on behalf of the respondents. He shall file objections on behalf of the respondents by the next date of hearing.

List on Monday, the 27th of July, 2020.

Meanwhile, the respondent BOPEE is directed to allow the petitioner in the

mopping up round of counselling for MD/MS/PG diploma course today itself or, at the most, tomorrow, result whereof shall be kept in a sealed envelope. It is further directed that in the event any seat having become available on non-counselling of the petitioner for her admission in MD/MS/PG course on the scheduled date, same shall be filled up on counselling of the petitioner and, in the event it is already filled up and allotted to some other candidate, such candidate shall not be allowed to join by the concerned Principal of the Medical College. It is also provided that pendency of the instant petition shall not form any impediment for the respondent BOPEE to consider the claim of the petitioner and settle the same, which may even include her admission as per merit secured by her.

Since, the order has been dictated in presence of the counsel for the BOPEE and in view of the urgency involved, it shall be incumbent upon the Chairman, BOPEE to allow the petitioner to participate in the counselling today or tomorrow at the most, without waiting for the service of the order. The petitioner, on her part, shall approach the Chairman, BOPEE, today itself. Mr Natnoo shall inform the respondent BOPEE about the order passed.

Registry, by Virtual mode, shall send a copy of this order to respondent-Chairman, BOPEE, copy whereof shall also be send to the learned appearing counsel for the parties today itself."

19. Thereafter, the matter was listed on 29.07.2020, when the result of counseling was produced in Court in a sealed cover. The same was opened and it was found that as per her merit, a seat in MS Anatomy has been kept reserved for her. Further, following interim directions were issued.

"Meanwhile, since the last date for admission to MD/MS/PG diploma courses is, admittedly, fixed as 31st of July, 2020, therefore, in order to protect the lis, it has become necessary to pass some interim order at this stage. In that view of the matter, the respondent-BOPEE is directed to provisionally admit the petitioner in the reserved seat of MS Anatomy in Government Medical College (GMC), Jammu, which, however, shall be subject to final outcome of this Writ petition. Principal, Government Medical College (GMC), Jammu, shall allow the petitioner to join the aforesaid course. It is made clear that mere provisional admission of the petitioner to the aforesaid course of MS Anatomy shall not confer any right on her to seek permanent admission to the said course, which shall be subject to final orders of this Court. Besides, this direction shall not form any basis for any of the competing candidates for claiming the aforesaid relief, notwithstanding the final decision in this Writ petition.

Registry to send a copy of this order to Chairman, BOPEE; Principal, Government Medical College, Jammu; and to the learned appearing counsel for the parties today itself, through Virtual mode.

20. Reference to the law laid down by Hon?ble the Supreme Court dealing with different facets of admissions in professional courses and passing of interim

orders, would be relevant at this stage. Arguments raised by the petitioner do not carry any weight if seen in the light of judgment of Hon<sup>ble</sup> the Supreme Court in AIR 2017 SC 1826 titled as Dental Council of India v. Dr. Hegdewar Smruti Rugna Seva Mandal, Hingoli & Ors. opined as under:

"9. Such a controversy has not arisen for the first time. A two Judge Bench in Union of India v. Era Educational Trust and another, 2000(2) S.C.T 474 : (2000) 5 SCC 57 stated that normally this Court would hesitate to interfere with an interlocutory order, but was compelled to do so where prima facie it appeared that the said order could not be justified by any judicial standard, the ends of justice and the need to maintain judicial discipline required the Court to do so and to indicate the reasons for such interference. The Court, advertent to the aspects of passing of orders relating to provisional admission, quoted a passage from Krishna Priya Ganguly v. University of Lucknow, (1984) 1 SCC 307 which reads thus:-

"That whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible."

The Court also thought it appropriate to reproduce further observations from Krishna Priya Ganguly (supra):-

"Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general."

10. Adverting to the facts in the case before it, the Court held:-

"9. In the present case, this type of situation has arisen because of the interim order passed by the High Court without taking into consideration various judgments rendered by this Court for exercise of jurisdiction under Article 226. It is apparent that even at the final stage the High Court normally could not have granted such a mandatory order. Unfortunately, mystery has no place in judicial process. Hence, the impugned order cannot be justified by any judicial standards and requires to be quashed and set aside." The aforesaid passage is quite vivid and reflects the surprise expressed by the learned Judges.

11. In Medical Council of India v. Rajiv Gandhi University of Health Sciences and others, 2004(2) S.C.T. 379 : (2004) 6 SCC 76 the three-Judge Bench referred to the authority in Era Educational Trust (supra) and emphatically reiterated the law declared therein. The reiteration is as follows:-

"4. We once again emphasise that the law declared by this Court in Union of India v. Era Educational Trust (supra) that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is

subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by educational institutions concerned for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council."

The aforesaid pronouncement, as is manifest, rules that issue of an interim order in respect of an institution which has not received the approval is not countenanced in law.

12. In *Medical Council of India v. JSS Medical College and another*, 2012(2) S.C.T. 65 : (2012) 5 SCC 628 the issue had arisen with regard to passing of interim orders by the High Court relating to permission for increase of seats. The anguish expressed by the Court is reflectible from the following passage:-

"12. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis."

13. In *Priya Gupta v. State of Chhattisgarh and others*, 2012(3) S.C.T. 231 : (2012) 7 SCC 433 dealing with various aspects, the Court was in pain and thought it appropriate to request the High Courts with humility. The lucid statement is extracted below:-

"78.4. With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. ..."

14. In *Medical Council of India v. M.G.R. Educational & Research Institute University & another*, (2015) 4 SCC 580 treating the admission as unauthorized as there had been no approval by the MCI, the Court imposed costs of Rs. 5

crores on the respondent institution therein, for it had created a complete mess insofar as the students were admitted to the second batch of MBBS course in the college. There has been a further direction that the amount of costs that was directed to be deposited before the Registry of this Court was not to be recovered in any manner from any student or adjusted against the fees or provision for facilities for students of subsequent batches.

15. The three-Judge Bench in *Royal Medical Trust* (supra), while dealing with time schedule, stated thus:-

"33. The cases in hand show that the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in *Priya Gupta* (supra) it did exercise that power in favour of government medical colleges. The decision of this Court in *Priya Gupta* (supra) undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time-limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in *Priyadarshini*[9]. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with *Priyadarshini* (supra) where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in *Priya Gupta* (supra) must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by this Court in *Madhu Singh*[10]and *Mridul Dhar* (5)[11]must always be observed."

16. The question of tenability of an interim order passed by the High Court in matters of admission came for consideration in a recent decision in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others*, (2016) 11 SCC 530. The Court found that after the MCI and the Central Government having twice considered the inspection report, the matter ought to have been given a *quietus* by the High Court for the academic year 2015-2016. It has been further observed that the High Court ought to have been more circumspect in directing the admission of students and there was no need for the High Court to rush into an area that MCI feared to tread. It was further observed that:-

"27. ... Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be

taken lightly. First of all the career of a student is involved - what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty."

We respectfully concur with the said observations.

17. It is worthy to note that the Court thought it appropriate to observe that for the fault of the institution, the students should not suffer nor should the institution get away scot-free. It issued certain directions to the institution that it should not have entered into adventurist litigation and costs of Rs. 5 crores were imposed for playing with the future of the students and the mess that the institution had created for them. Certain other directions were issued in this case which we need not advert to.

18. In *Ashish Ranjan* (supra), the Court after hearing the Union of India, MCI and all the States, had fixed a time schedule and directed as follows:-

"3. Regard being had to the prayer in the writ petition, nothing remains to be adjudicated. The order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say AIIMS and PGI (for the examination held in July) shall also follow the schedule in letter and spirit."

19. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order, but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the court grants approval in a way which is the subject matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a

situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

20. The High Court has to realise the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young. One may say, "... life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.

21. There is no reason to invite a disaster by way of an interim order. A Judge has to constantly remind himself about the precedents in the field and not to be swayed away by his own convictions. In this context, the oft-quoted passage from Felix Frankfurter<sup>[12]</sup> would be apt to remember:-

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians? those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

21. Same view was reiterated in 2019(1) SCT 1, titled as Tamil Nadu Dr. Mgr Medical University v. SVS Educational and Social Trust. Relevant para therefrom is extracted below:

"Exercise of jurisdiction in favour of provisional admissions during the pendency of the writ petition exposes the students to the risk of losing years in case of dismissal of writ petition. Courts should desist from passing interim orders directing provisional admissions of the students. [see Krishna Priya Ganguly & Ors v. University of Lucknow & Ors., (1984)1 SCC 307 and Union of India v. Era Educational Trust & Anr., (2000) 5 SCC 57]"

22. From the factual matrix of the case as has been noticed above, it is clear that after the cut off marks for grant of admission in MD/MS courses were reduced for the academic year 2020-21, the mop up counseling was scheduled. The candidates were required to register themselves from 15.07.2020 to 18.07.2020. It is evident from the documents placed on record by the petitioner that she got her sampling for COVID-19 test on 16.07.2020. That means she could very well get herself registered in the office of the BOPEE when she was already at Jammu and working as Medical Officer Incharge of Physiotherapy Center in Government Medical College, Jammu. Being a medical graduate, she may very well be knowing that dates fixed for admission to medical courses at under-graduate or post-graduate level are sacrosanct. Hon'ble the Supreme Court had come heavily on the colleges when at their own will admissions were being granted with no final cut off date. The same is also part of the Regulations framed by the MCI (Medical Council of India). During this year, the dates were extended and

the cut off merit was also lowered down as because of COVID-19, lot of students from different parts of the country could not approach the colleges located at other places, which may be at a distance from their place of residence.

23. It may further be added that subsequent to the mop up counseling, scheduled from 19.07.2020 to 23.07.2020 for different categories, the BOPEE had notified a schedule for vacant seats in the private medical colleges. They were to approach the office of the BOPEE from 9:00 AM to 12 Noon on 28.07.2020.

24. Though, the learned senior counsel for the petitioner sought to argue that the petitioner did not avail of that opportunity as she already had an order in her favour from this Court. Firstly, it was merely an interim order, the same is always subject to final decision and further for admission in the open merit category, the petitioner was not eligible as the Notification No. 20 of 2020 dated 23.07.2020 provided that only the candidates up to NEET score of 275 could apply. Admittedly, the petitioner had score of 232.

25. As far as the star argument of learned senior counsel for the petitioner that the date fixed for admission is not sacrosanct, in my opinion, the same is totally misconceived. The dates so fixed are not to be extended or relaxed by the Court considering the difficulty which may be faced by any one candidate. Such cut off dates are prescribed universally for all the eligible candidates. Any relaxation of the cut-off date in favour of one candidate will certainly cause discrimination and would be resulting in unfair treatment to other candidates who may also have similar problems and claim that they also could not approach the BOPEE within time for any reason. It is not for the Court to continue extending cut off dates so fixed examining the claim made by such candidates on case to case basis. In any case, when the interim order was passed in favour of the petitioner on 22.07.2020, the counseling in the category of the petitioner was already over. The petitioner could not have claimed that she should now be allowed to participate in the process of admission when as per the condition laid down in the notice any vacant seat in the reserved category, was to be shifted to general category for which the counseling was scheduled from 21.07.2020 to 23.07.2020. The same would have certainly resulted in prejudice to the candidate, who may be in line for seeking admission in general category.

26. In the case in hand as well, there is an application filed by one of the candidates as he was denied admission on account of interim order passed by this Court, however, later on, admission having been granted to him, he did not wish to argue in the matter.

27. The Judgment of Hon<sup>ble</sup> the Supreme Court in S. Krishna Shradha's case supra does not come to the rescue of the petitioner for the reason that the legal issue sought to be argued by him was not considered in the aforesaid judgment. It was a case where on account of some omissions or commission by the authority, a candidate is denied admission. Further in para-9(5)(i) of the

judgment, it has been specifically mentioned by Hon?ble the Supreme Court, while answering the reference to the larger Bench, that the directions being issued pertain to admission in MBBS courses only and not the post-graduate courses. Hence, this judgment does not come to the rescue of the petitioner.

28. The contention raised by the learned counsel for the petitioner that in case, seats are lying vacant, the petitioner can very well be granted admission, is attractive but without any merit. Cutoff date fixed for admissions cannot be left open for all times to come. Mop up counseling was meant for that purpose only, so that anyone left out can get himself/herself registered and apply for admission. The idea at that stage, was also that the vacant seats be filled up. The petitioner missed the bus and cannot be allowed to raise the arguments. In case the argument of the petitioner is accepted it will result in admissions being made on walk in basis. That cannot be permitted. It is not merely a technicality.

29. For the reasons mentioned, I do not find any merit in the present petition, the same is accordingly, dismissed.