

(2022) 09 GUJ CK 0027

In the Gujarat High Court

Case No : ?R/Special Civil Application No. 9557 Of 2022

Nisha Maganbhai Miyatra

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2022) 09 GUJ CK 0027

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : YN Ravani, Siddhant R Shah, MI Shah, Nidhi Vyas, Km Antan, Vikas V Nair, Ankit Shah

Final Decision : Dismissed

Judgement

Aniruddha P. Mayee, J

1. The present writ petition has been filed praying for the following reliefs:-

"7(A) YOUR LORDSHIPS may be pleased to issue a writ of Mandamus and/or other appropriate writ, order or direction in the nature of Mandamus by holding that the petitioner is deprived of the course of MD Paediatrics on account of the fault of respondent no.4 and that the petitioner is entitled to get/secure admission in MD Paediatrics with the respondent no.3 college and further be pleased to direct to the respondent no.2 to give admission to the petitioner in Upgraded course of MD Paediatrics in the respondent no.3 college for the year academic year 2021-2022 as per the Office Order dated 05.05.2022 (Annexure-

F) and per the petitioner to regularly attend the class as regular student;

AA. Your Lordships may be pleased to issue a writ of mandamus and/or any other appropriate writ order or direction in the nature of mandamus directing the respondent authorities to consider the case of the petitioner for giving admission either in M.D.Paediatric course or M.D.Gynaecology course as per the availability

of the seats or in any other upgraded course where seats are available with the authority.

(B) Pending admission, hearing and/or final disposal of this petition, Your Lordships may be pleased to direct the respondent no.2 to make the arrangement of the provisional admission of the petitioner for the academic year 2021-2022 in the course allotted to her i.e. MD Paediatrics in respondent no.3 college with immediate effect.”

2. The brief facts leading to the filing of the present writ petition are as follows:

2.1 The petitioner is a medical student, who passed her degree of Bachelor of Medicine and Bachelor of Surgery [“MBBS” for short] from C.U.Shah Medical College, Surendranagar, from Saurashtra University in the academic year 2020. Thereafter, the petitioner appeared in the NEET-PG examination in the year 2021. The petitioner secured 497 marks out of total 800 marks with All India Rank 18225. The petitioner participated in the round 1st of the NEET-PG for the admissions in the year 2021-22 and was successfully allotted seat for the degree in M.S. (Obstetrics & Gynecology) in Institutional Seat quota at Shri M.P.Shah Medical College, Jamnagar. Pursuant to the said allotment, the petitioner completed all the formalities and joined the course on 1.2.2022. The petitioner opted for an upgradation from the existing admission to M.S. (Obstetrics & Gynecology) and therefore, she again applied in the 3rd round of admissions. That on 29.4.2022, the merit list of 3rd round of admission was published at around 11:00 p.m. The petitioner was successful in being allotted a seat in M.D. (Paediatrics) at P.D.U. Medical College, Rajkot. In terms of the admission procedure and guidelines, necessary documents were to be submitted from 30.4.2022 to 5.5.2022 (till 4:30 p.m.). As per the guidelines, the petitioner was to report to the Help Center and generate an admission order in her favour accepting and confirming her allotment to the seat of M.D.(Paediatrics). Accordingly, the petitioner visited the Help Center between 11:00 to 12:00 noon as well as between 3:00 p.m. to 4:00 p.m. on 30.4.2022. The petitioner had taken a prior appointment for submission of documents at Help Center between 3:00 p.m. to 4:00 p.m. on 30.4.2022. Since the petitioner was allotted seat in upgradation in the course of M.D. (Paediatrics) at P.D.U. Medical College, Rajkot, she resigned from her earlier admission to the course of M.S. (Obstetrics & Gynecology) at M.P.Shah Medical College, Jamnagar. It is the case of the petitioner that on 5.5.2022, she reported to P.D.U. Medical College, Rajkot for payment of fees and verification of documents for securing admission to M.D. (Paediatrics). After reporting to P.D.U. Medical College, Rajkot, she submitted the relevant documents and also paid the course fees as per the guidelines. It is the case of the petitioner that her documents came to be accepted by the respondent No.3 college along with the fee receipt, however, no query was generated by the college authorities while accepting the documents. It is submitted that she was asked to report at 5:00 p.m. for further admission procedure.

2.2 That the final list of candidates who had confirmed their admission in the 3rd round of admissions came to be published by the Admission Committee at around 4:30 p.m. on 5.5.2022. That to the utter shock and surprise of the petitioner, in the said list against the name of the petitioner an endorsement of "candidate not reported" was shown and the seat she was allotted was treated as vacant. Noting such discrepancy, the petitioner immediately approached the college authorities and inquired as to why such an endorsement/remark has been shown against her name in the merit list in spite of completing all formalities and submitting all documents as well as course fees, the petitioner had also duly reported to the college authorities within time. Upon further scrutiny of documents as submitted by the petitioner, it was revealed that the admission order from the Help Center for confirming seat against the provisional allotment letter issued to her was not generated and that the duly stamped and signed by the Nodal Officer admission order was not submitted to the new college i.e. respondent No.3. Upon receiving such information, the petitioner realized that there was serious lapse in respect of the generation of admission order which was to be obtained from the Help Center, but which was not issued to her.

2.3 The petitioner, thereafter, made a representation to the respondent No.2 - Admission Committee to her vain.

2.4 By a letter dated 6.5.2022, the petitioner herein was officially communicated that her name is not included in the final list of students who had secured admissions in the 3rd round for the reason that she had failed to provide/submit the admission order. The petitioner thereafter filled the form for the 4th round i.e. the stray vacancy round held by the respondent No.2 - Admission Committee. She, however, failed to secure any seat in the said round.

2.5 Aggrieved by serious lapse whereby she lost her admission to the upgraded course of M.D. (Paediatrics) in round 3, the petitioner preferred the present writ petition praying for the aforementioned reliefs.

3. Learned senior counsel Mr. Y.N. Ravani appearing for the petitioner submitted that the petitioner is a meritorious student and had secured admission in the 1st round itself in the State quota as well as in the All India quota in the stream of M.S. (Obstetrics & Gynecology). It was submitted that the petitioner duly confirmed her admission and started studying in the course of M.S. (Obstetrics & Gynecology) with the respondent No.4 college from 1.2.2022. He further submitted that the admission process for the round 3rd started on 30.4.2022 and ended on 5.5.2022. He submits that if a student is allotted a seat in the upgraded course, then the candidate has to resign from the earlier seat secured by her. In the present case also, after the petitioner was provisionally allotted the upgraded seat of M.D. (Paediatrics) in the respondent No.3 college, she had resigned from her admission to the course of M.S. (Obstetrics & Gynecology) at respondent No.4 college. He submits that the petitioner had duly followed the guidelines issued by the respondent No.2 Admission Committee even while securing admission in the 1st round and had also followed the procedure as

indicated during the 3rd round of admission. He submitted that the petitioner had duly taken appointment with the Help Center on 30.4.2022 itself when the list of successful candidates being allotted the upgraded course was published by the respondent No.2 Admission Committee. She had paid the requisite fees at the Help Center for the generation of the admission order and also submitted all necessary documents at the Help Center. However, due to lapse of the officers at the Help Center, there was no generation of the admission order confirming the admission in favour of the petitioner by the Help Center authorities and the petitioner was never handed over the requisite admission order which was required to be mandatorily issued by the Help Center to the successful candidate. The petitioner was informed that the petitioner should now directly report to the concerned college on or before 5.5.2022 where she had secured the upgraded seat after completing all the procedure in the previous course in which she was studying. In terms of the instructions by the Help Center and the Nodal Officer there, the petitioner reported to the new college on 5.5.2022 for document verification as well as for payment of remaining part of fees. The respondent No.3 college accepted all documents and also accepted the remaining fees. The respondent No.3 college while verifying the documents did not inform the petitioner that there was no admission order duly stamped by the Nodal Officer in the documents so submitted by her. The concerned college also failed in its duty to properly verify the documents and to intimate the lack of necessary documents to the petitioner. Learned counsel for the petitioner would submit that the respondents miserably failed in their duties of helping the candidate who had successfully secured an admission in M.D. (Paediatrics) thereby resulting in loss of admission secured in round 1st as well as to the upgraded seat allotted in round 3rd.

4. Learned senior counsel Mr. Ravani further submitted that looking at the chronology of events which had occurred, it was clearly evident that there was negligence on the part of the officials at the Help Center who did not execute their duties properly even though the petitioner had taken an appointment on the very first date after the declaration of the result for the upgraded seat in the 3rd round. He submits that the Help Center officers who have received the part fees for confirmation of the seat as well as necessary documents were duty bound to confirm the seat of the petitioner and to generate an admission order. He further submitted that it was the duty of the Nodal Officer also at the Help Center to duly stamp and sign the admission order and thereafter to hand it over the petitioner once she had approached the Help Center. He submitted that both this vital aspects are required to be considered, inasmuch as there was no fault on the part of the petitioner not even a bonafide fault committed by her. In fact, it was the mistake as well as negligence on the part of the Help Center and the college authorities who had misguided the petitioner by informing her that the procedure is completed and she can proceed with to the new college for completing the further formalities. He further submitted that the document verification which was conducted even by the new college did not inform the

petitioner that the admission order which was a vital document for confirming the admission and taking admission in the new college was missing from the said documents which she had submitted for verification. This shows lethargic and casual attitude on the part of the college authorities for which the petitioner had to suffer by losing her meritorious seat as also the academic year. He submits that the laxity on the part of the authorities as well as the gross negligence has resulted in the petitioner being without admission in PG course even though on merits she had secured a seat in the M.S. (Obstetrics & Gynecology) and later on an upgraded seat in M.D. (Paediatrics). Now, the petitioner is made to run from pillar to post for the lapse on the part of the authorities. He submits that even at the respondent No.3 college the documents were submitted by the petitioner at around 1:00 p.m. along with the fees challan of the payment of complete course fees of M.D. (Paediatrics). The respondent No.3 college authorities also did not do their job properly and did not verify the documents as submitted by the petitioner and had asked her to come for joining the course after declaration of the final result at 4:30 p.m. It was submitted that the petitioner had suffered because of the negligence and lapse on the part of the Help Center at respondent No.4 college and the authorities at the respondent No.3 college where she had got the upgraded seat. He submitted that under the guidelines issued by the respondent No.2 Administration Committee, the Help Center has to carry out two functions. Firstly, the Help Center has to accept the allotment letter issued to the candidate and accept part payment of the fees to the seat allotted. Secondly, it is required to generate an admission order on the basis of the provisional allotment letter issued to the candidate on the submission of the part fees. This procedure is necessary to confirm the provisional allotment of the seat given to the candidate. In the present case, the petitioner had fulfilled her part of the obligation by paying a demand draft for the prescribed fees. However, the Help Center did not generate any admission order confirming her provisional allotment to the upgraded seat. In the present case, on the contrary, the officials manning the Help Center misguided the petitioner by informing her that the formalities at the Help Center had been completed and that she can proceed to the concerned college where she has been allotted the upgraded seat for further formalities. The Nodal Officer present at the Help Center was thoroughly negligent in not issuing the admission order along with the required stamp and his signature on the admission order. Under the guidelines, the Help Center plays an important role in confirming the provisional allotment granted to the candidate. It was submitted that because of the negligence of the duties on the part of the Help Center officials and the Nodal Officer in generating the duly signed and stamped admission order in favour of the petitioner as a result, the provisional allotment in the upgraded seat of M.D.(Paediatrics) in favour of the petitioner herein could not be confirmed despite the payment of demand draft and the necessary formalities done by her which has resulted in declaring the seat as "candidate not reported". It was submitted that it is also required to be considered that the petitioner belongs to the lower strata of the society and to the best of her ability she had undertaken all the procedure carefully and sincerely and therefore, she

cannot be made to suffer for the lapse on the part of the authorities at the Help Center.

4.1 Learned senior counsel Mr. Ravani for the petitioner has relied upon the following judgments in support of his case:

[a] 2012(7) SCC 389 – Asha v. Pt. B.D.Sharma University of Health Sciences & Ors. (para-14, 16, 17, 18, 30, 31, 38.1 and 38.2);

[b] 2020(17) SCC 465 – S. Krishna Sradha v. State of Andhra Pradesh & Ors. (para-11, 12 and 13);

[c] 2020 SCC Online SC 992 – National Medical Commission v. Mothukuru Sriyas Koumudi & Ors. (para-7, 9, 10 and 11);

[d] (2004) 7 SCC 166 – S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.

5. Per contra, Ms. Manisha Lavkumar, learned Government Pleader and senior counsel appearing for the respondent No.2 - Admission Committee submitted that the NEET examination for the academic year 2021-22 was held and thereafter, counseling commenced from 12.1.2022. She submits that the academic year 2021-22 has commenced from 1.2.2022. She further submitted that the petitioner participated in the counseling and was provisionally allotted admission in the subject of M.S. (Obstetrics & Gynecology) in the State quota in round 1st counseling. Accordingly, as per the guidelines of the respondent No.2 Admission Committee, the petitioner herein approached the Help Center at the respondent No.4 college and generated admission order in respect of her admission to the course of M.S. (Obstetrics & Gynecology). It is submitted that the procedure was duly followed by the petitioner and after submitting necessary documents, she had obtained the admission order duly stamped and signed by the Nodal Officer of the Help Center of the respondent No.4 college. She, thereafter, along with the necessary documents and admission order so generated confirming her admission in 1st round in the course of M.S. (Obstetrics & Gynecology) completed the necessary formalities with the respondent No.4 college further and took her admission and joined the said course on 1.2.2022 as per the guidelines issued by the Admission Committee. It was further submitted that the petitioner did not participate in the 2nd round of NEET counseling 2021-22. The petitioner, thereafter, filled-up the counseling form for the 3rd round (which ended on 29.4.2022) of counseling held by the Admission Committee. It was submitted that while participating in the 3rd round, the candidate has to give an undertaking that in case of allotment to an upgraded seat, the candidate cannot retain 2 seats and the candidate has to resign from the earlier allotted seat. Pursuance to this, the petitioner herein had resigned from her seat of M.S. (Obstetrics & Gynecology) in view of the allotment to the upgraded seat of M.D.(Paediatrics) at the respondent No.3 college. It was submitted empathetically that the instructions for admission confirmation in 3rd round were the same as they were in the 1st and 2nd round and there was no

change whatsoever in the instructions. It was further submitted that the petitioner had successfully followed all the instructions in 1st round while taking admission to the course of M.S. (Obstetrics & Gynecology). In the 3rd round wherein she was provisionally allotted the upgraded seat, same procedure was required to be followed by the petitioner. It was submitted that the petitioner cannot now claim that she was not aware of the procedure and the vital document to be obtained from the Help Center i.e. the admission order confirming her admission duly stamped and signed by the Nodal Officer when she had generated the same document at the Help Center for admission to M.S. (Obstetrics & Gynecology) in the 1st round. It was submitted that the petitioner did not follow the instructions as issued by the respondent No.2 Admission Committee. It was submitted that she had directly approached the respondent No.3 college and therefore, no admission order was generated in her favour. In absence of the generation of the admission order, her provisional allotment to the course of M.D. (Paediatrics) was shown with the endorsement "candidate not reported" in the final list of candidates who had taken admission in the 3rd round of counseling.

5.1 It was submitted that the petitioner herein had to hand over her original admission order of 1st round along with other necessary documents as given in the instructions and thereafter obtain the new admission order duly stamped and signed. It was submitted that this is not a case where it can be said that the authorities at the Help Center were negligent and there was no fault of the petitioner. In the present case, the petitioner has tried to shift her burden on the authorities at the Help Center, claiming that only they were at fault. The petitioner who had secured an admission in round 1st following the same procedure was also duty bound to follow the same instructions scrupulously in the 3rd round and she cannot claim to be ignorant about the generation of the new admission order for confirming her admission to the upgraded seat and submission thereof at the new college where she allotted the upgraded seat. It was submitted for the sake of argument that even if it is assumed that the authorities were at fault for not generating the admission order, the petitioner herein was also equally duty bound to ensure and confirm her admission to the upgraded seat by getting the new admission order generated at the Help Center and obtaining duly stamped and signed admission order from the Nodal Officer by returning back the earlier admission order as well as provisional allotment letter for the upgraded seat. In the present case, no such documents were submitted to the Help Center authorities and therefore, it cannot be said that the authorities were negligent and in serious lapse on their duty for not generating the admission order of the petitioner. Ms. Manisha Lavkumar, learned senior counsel, further submitted that in the present case, the petitioner is equally negligent and at fault in not confirming her admission to the upgraded seat and by submitting the necessary documents. It was submitted that it was inaction and negligence of the petitioner that the seat was shown as "not reported". Just reporting to the Help Center will be of no avail to the petitioner since the purpose

of approaching the Help Center was to confirm her admission and generate fresh admission order which she has not done and is silent in her averments about her own actions at the Help Center. Therefore, it cannot be said that the authorities at the Help Center were only at fault and because of which the petitioner has lost her admission to the upgraded seat as well as to a PG seat.

5.2 She thereafter submitted that the petitioner has suppressed material fact that after her seat went unreported, she had participated in the stray vacancy round and that she could not secure any admission in the said round. It was further submitted that only those candidates who had not secured any admission in the earlier round or those who had secured admission but still wish to participate in the stray round must resign from their seats before their participation in the 4th stray vacancy round. In the present case, after losing her seat in round 3rd due to the lapse on her part, the petitioner participated in the 4th round i.e. stray vacancy round accepting all the conditions therein. It was submitted that in view of this participation in 4th round, the petitioner cannot now contend that she should be allotted the upgraded seat secured by her in the 3rd round as she is deemed to have resigned/waived her right to any seat in 3rd round.

5.3 Learned senior counsel Ms. Manisha Lavkumar for the respondent Admission Committee has relied upon the following judgments in support of her case:-

[a] 2012(7) SCC 389 – Asha v. Pt. B.D.Sharma University of Health Sciences & Ors. (para-14, 17 and 32);

[b] 2020(17) SCC 465 – S. Krishna Sradha v. State of Andhra Pradesh & Ors. (para-9.2, 10 and 38.3);

(Mr. Nair learned advocate for the respondent No.5 also relied on para-13.2 of this judgment);

[c] 2020 SCC Online SC 992 – National Medical Commission v. Mothukuru Sriyas Koumudi & Ors. (para-12);

6. Mr. Vikas B. Nair, learned advocate for the respondent No.5 National Medical Commission while adopting the arguments of the learned senior counsel Ms. Manisha Lavkumar has submitted further that in the present case, once the petitioner exercised her option for the upgraded seat pursuant to which she had been allotted the seat in the course of M.D. (Paediatrics), the earlier admission of the petitioner to M.S. (Obstetrics & Gynecology) course was automatically cancelled. The seat secured by the petitioner went unreported on 5.5.2022 i.e. the last date for confirming the admission, since the petitioner did not confirm her admission by generating admission order. It was submitted that the admissions to the NEET-PG are completely computerized and once concerned dates are over and the procedure for admission as per the instructions are not undertaken, then there is no possibility of any reversal for consideration since the unreported seats are automatically carried forward for the next round. It was

submitted that the stray vacancy round (4th round) was completed on 7.5.2022 which was the last date of admission to the PG course for the academic year 2021-22. He submits that after the last date of admission and closure of admission process, the respondent No.5 National Medical Commission has become functus officio. He further submits that the NEET PG entrance for the subsequent academic year 2022-23 has also been held and the results have also been declared on 1.6.2022. He submits that in view of the lapse on the part of the petitioner, the only option available to her is to participate again for the next academic year. Mr. Nair, learned advocate, further submits that the admission to the PG course for the academic year 2021-22 and its schedule as declared by the respondent No.5 – National Medical Commission was duly approved by the Hon'ble Supreme Court vide order dated 9.5.2022 (Page-484 and 485 of the compilation). He submits that as per the said schedule, the last date for admission to the PG course as prescribed as per the statutory regulations was 7.5.2022. No admission can be granted after the said date as the same will be contrary to the statutory regulations and the schedule approved by the Hon'ble Supreme Court. He submits that time and again, the Hon'ble Supreme Court has held that the schedule needs to be followed strictly and that no deviation is permitted. It was submitted that the present case is not an extraordinary situation where the Court may show its indulgence since the petitioner was at fault for not ensuring confirmation of admission and generation of admission order in her favour despite complete knowledge of the same since she had undergone the said procedure while securing her seat and admission in round 1st of the NEET-PG course. He further submits that the Hon'ble Supreme Court has categorically held in catena of decisions that no admission can be granted after one month of the closure of the admission process in any case and the said position of law should be followed in the present case also and the admission once cancelled, cannot be revived in any circumstances as it would be impermissible. He further submits that in the present case, it is not a question of merit since the admission process has not been challenged and the same has operated as per the law and therefore also, in the present case, no indulgence should be granted. Further, it was submitted that no admission should be granted even against the vacant seats since the admissions for the academic session 2021-22 are already complete and over on 7.5.2022. He further submits that the academic session has already started on 1.2.2022 and if the admission is granted to the petitioner now after the period of about 6 months, she will not be able to cope up with the loss of studies and the National Medical Commission also cannot exempt her for the said loss of academic period. He therefore submits that the present writ petition be dismissed.

7. In the rejoinder Mr. Ravani, learned senior counsel for the petitioner, has submitted that it cannot be disputed that the petitioner did not complete the formalities on her part. She had duly taken appointment with the Help Center and had gone there and submitted the requisite demand draft for part fees and the necessary documents. It is the Help Center authorities who had misguided

her by informing her that the formalities are completed and that she should now go and report to the new college where she was allotted the upgraded seat. In view of this misguided instructions from the Help Center, the petitioner straight away went to the new college and submitted the requisite documents along with the payment of full course fees as per the instructions. He submits that it is equally the duty of the Help Center authorities to verify the documents submitted by the candidate who has been provisionally allotted the seat in the NEET-PG. If any document is missing or not provided, the same should have been brought to the notice of the petitioner herein so that necessary action could be taken within time and the admission to the allotted seat could be secured and confirmed.

In the present case, the Help Center authorities of the respondent No.4 college never asked for any document from the petitioner. If it would have been informed by the Help Center authorities, the petitioner who was still holding the original admission order for earlier allotted course could have submitted the same immediately for the generation of the requisite new admission order thereby confirming her allotted seat. But in the present case, the Help Center authorities due to their negligence and serious lapse on their part did not ask for the original admission order with regard to M.S. (Obstetrics & Gynecology) from the petitioner and did not issue new admission order with regard to upgraded M.D.(Paediatrics) seat. Due to this serious lapse, the petitioner lost her admission to the upgraded course despite securing admission on merits to the said course. It was submitted that in the present case, the admission which was secured purely on merits has been lost due to the procedural technicality and the same cannot be attributed to the petitioner as it was the duty of the officers at the Help Center to ensure and ask for necessary documents from the candidate for generation of the admission order. In the facts and circumstances of the present case, the petitioner was having the requisite document with her and Help Center employees did not point out the deficient document to be submitted for the confirmation and generation of the new admission order nor did they take back the requisite document needed for confirming the admission and issuing the admission order in respect of the upgraded seat and the petitioner cannot be made to suffer for such actions on part of officials of Help Center. Mr. Ravani, learned advocate for the petitioner, has further submitted that as on date, there is a vacant seat in the course of M.S. (Obstetrics & Gynecology) in the respondent No.4 college which is the same course in which the petitioner herein had secured admission in the 1st round and had also joined the same. He would submit that today since the said seat is lying vacant because of non-joining of the candidate who was allotted the said seat under All India quota, the petitioner may kindly be granted the admission against the said vacant seat as it will not prejudice anybody and that the petitioner had secured such a seat in the said course on merits in the 1st round. It was submitted that the petitioner has been severely prejudiced due to the procedural and technical lapse on the part of the Help Center of the respondent No.2 Admission Committee and the petitioner should be compensated by giving admission against the said vacant seat now as

no further admission can be granted in respect of the said vacant seat.

8. Responding to the alternative prayer, learned senior counsel Ms. M.L.Shah and learned counsel Mr. Nair for the respondents submitted that once last date of admission is over and the process of admission is completed, there is no power to give any admission to any candidate who had participated in the said admission process. Even otherwise, both the respondent No.2 and respondent No.5 who conducted the admission process for NEET-PG have become functus officio after the last date of admission i.e. 7.5.2022. Even otherwise, as per the law declared by the Hon'ble Supreme Court, no any admission can be granted by any Court of law after the completion of 1 month from the last date of admission since it will gravely affect the academic status of such a candidate. It was submitted that in the present case, the PG course had already started on 1.2.2022 and the petitioner had also joined the said course in 1st round from 1.2.2022. Now, if the petitioner is granted admission against the vacant seat in M.S. (Obstetrics & Gynecology) after a period of more than 5 months from the starting of the course, the petitioner herein will not be able to cover up the course study which has been taught for the last many months and even this factor will disentitle her from being granted admission to the said vacant post. It was further submitted that the petitioner had no right to any vacant seat.

9. Heard learned counsel for the parties at length and perused the relevant documents on record.

10. The law in respect of admission to the medical course post the completion of admission process has now been settled by the Larger Bench of the Hon'ble Supreme Court. A Three Judge Bench of the Hon'ble Supreme Court in case of 2020(17) SCC 465 – S. Krishna Sradha v. State of Andhra Pradesh & Ors. has held as under:-

"10.4 However, in the subsequent decision in the case of Jasmine Kaur (Supra) after considering the decision of this Court in the case of Asha (Supra) ultimately in paragraph 33, it is observed and held as under:

"33.1. The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.

33.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

33.3 If a candidate is not selected during a particular academic year due to the fault of the institutions/authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

33.4. When a candidate does not exercise or pursue his/her rights or legal remedies against his/her nonselection expeditiously and promptly, then the courts cannot grant any relief to the candidate in the form of securing an admission.

33.5. If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

33.6. If it is found that the candidate acquiesces or waives his/her right to claim relief before the court promptly, then in such cases, the legal maxim *vigilantibus et non dormientibus jura subveniunt*, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

33.7. No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

33.8. There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carryforward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply in the next academic year.

33.9. There cannot be at any point of time a direction given either by the court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

33.10. Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

11. However, it is required to be noted that in the case before this Court in *Jasmine Kaur (Supra)* it was specifically found by this Court that there was a delay on the part of the candidate. It was specifically found that the conduct of the candidate in having fixed her own time limit in making the challenge, namely, after three months of the issuance of the prospectus and thereafter in filing the Letters Patent Appeal which process resulted in the Division Bench in deciding the Appeal only in the month of April, 2014 by which time the substantial part of

the academic year has been crossed, disentitles the candidate any relief and the case would not fall in any extraordinary circumstances.

12. However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission illegally and who has pursued his/her legal rights expeditiously without delay is entitled to any relief of admission more particularly in the courses like MBBS the relief of compensation as held by this Court in *Asha (Supra)*? The aforesaid question is required to be considered only to the cases where (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and (iv) candidate is found to be more meritorious than the last candidate who has been given admission.

12.1 At the outset, it is required to be noted that the question is with respect to a student/candidate seeking admission in the medical course more particularly in MBBS course. For a student/candidate seeking admission in professional courses more particularly the medical course each year is very important and precious. Similarly, getting admission in medical course itself is very important in the life of a candidate/student and even a dream of man. In light of the above, the question for consideration is whether compensation for a meritorious candidate, who has been denied the admission illegally and arbitrary having approached the court in time can be said to be just and equitable relief?

12.2 The right to equal and fair treatment is a component of Article 14 of the Constitution. As held by this Court *Asha (Supra)* that a transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for no fault of a candidate/student violates principles of Article 14 is that the citizen injured must be put back to his/her original position. In that sense, the primary relief is restitutionary. As observed hereinabove, for a meritorious student seeking admission in medical course is very important in the life of student/candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her fundamental rights. Compensation could be an additional remedy but not a substitute for restitutionary remedies. In case of medical admissions, even the restitutionary remedy of providing a seat in the subsequent year would lead to loss of one full academic year to a meritorious candidate, which cannot be compensated in real terms. Thus compensation for loss of year could be provided, but denial of admissions to a meritorious candidate cannot be compensated in monetary terms. Thus denial of admission in medical course to a meritorious candidate for no fault of his/her and though he/she has approached the Court in time and despite the same not granting any just and equitable relief would be denial of justice. Therefore, the question is what relief the Court can

grant by which right to equal and fair treatment to a candidate are protected and at the same time neither there is injustice to other candidate/student and even compromising with the quality education. Therefore, a balance is required to be struck. However, at the same time it can safely be said that the view taken by this Court in Jasmine Kaur (Supra) that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of his/her. Therefore we are of the view that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in paragraph 33.3 in the case of Jasmine Kaur (Supra) are satisfied, the Court can grant exceptional relief to the candidate of granting admission even after the cut off date is over.

13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1 That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

13.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30 th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30 th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3 In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4 Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5 It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.

14. In view of the above, the decision of this Court in the case of Jasmine Kaur (Supra) or any other decisions contrary to the above stand overruled. The decision of this Court in the case of Asha (Supra) is hereby affirmed to the aforesaid extent. The reference is answered accordingly.”

10.1 In view of said judgment, it is now well settled that if the Court finds that there is no fault attributable to the candidate and that the fault is only on the part of the authorities and if the time schedule for admission as prescribed is over and to do the complete justice, then the Court in the exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats. It cannot be more than 1 or 2 seats and such admissions can be ordered within a reasonable time i.e. within one month from the cut off date and under no circumstances beyond that. It has been further held that if a candidate is found to be meritorious and such candidate has approached the Court at the earliest and without any delay, the Court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate direction.

11. In the background of aforesaid settled legal position, now, this Court has to examine -

(i) Whether any fault was attributable to the petitioner herein?

(ii) Whether, in the present case, the loss of admission to the petitioner was wholly and squarely due to the actions of the respondent authorities?

11.1 In the present case, the petitioner had appeared in the NEET-PG for the academic year 2021-22. She had successfully secured admission to the course of M.S. (Obstetrics & Gynecology) with the respondent No.4 college and had also joined the said course from 1.2.2022 when the PG academic session started. The petitioner thereafter opted to upgrade her seat and participated in the 3rd round of counseling held in April-2022. In the 3rd round, the petitioner was successful in getting the upgradation to the course of M.D.(Paediatrics) in the respondent No.3 college as per the merit list declared on 29.4.2022. She, therefore, resigned from her seat secured in the 1st round of counseling in the course of M.S. (Obstetrics & Gynecology) and had submitted documents for admission in the upgraded seat for the course of M.D.(Paediatrics). The respondents No.2 and 3 had issued the instructions to the candidates who had participated in the 3rd round, which are as follows:-

"INSTRUCTIONS FOR ADMISSION CONFIRMATION ROUND-03

- In the Third Round, admission will be given on Newly added seats, Non-Reported Seats of Second Round & Cancelled Seats after second round, and subsequent vacant Seats due to allotment on above seats.

- xxx xxx

- Candidate has to take prior appointment for the Document Submission at Help Center. Candidate, himself/herself, can select the Date and time for Document Submission at the time of printing of Allotment Letter.

- xxx xxx

A. THE CANDIDATE, WHOSE ALLOTMENT HAVE NOT BEEN UPGRADED:

xxx xxx

B. THE CANDIDATE, WHOSE ALLOTMENT HAVE BEEN UPGRADED:

- The candidate, whose allotment have been upgraded (change in admitted subject and/or change in admitted college) in third round, have to report at the help center for confirmation of admission of third round.

- xxx xxx

- For securing admission of third round, the candidate must report to the same help center as reported in the first or second round with required documents. For confirmation of admission, take admission order of third round from help center.

- xxx xxx

- The candidates, who have confirmed their admission of 1st Round or 2nd Round of ACPPGMEC by paying term fees and submitting all required original

documents, and whose allotment have been upgraded in third round, have to submit the following documents as under:-

- a. Allotment Letter of ACPPGMEC of 3rd Round
- b. Original Admission Order of ACPPGMEC of 1st Round/2nd Round
- c. Photocopy of Receipt of payment of tuition fees for 1st Round &/or 2nd Round of ACPPGMEC
- d. Original Receipt of Payment of Difference of Tuition Fee, if applicable

C. THE CANDIDATE, WHO HAVE BEEN ALLOTTED SEAT FOR FIRST TIME:

xxx xxx

- Failing to bring any original document, the candidate will have no right of admission."

11.2 The petitioner in her petition has averred that following the said aforementioned instructions, she had duly taken appointment at the Help Center of the respondent No.4 college between 3.00 p.m. to 4.00 p.m. with the purpose of securing her admission. It is further averred in the petition that she had submitted all the necessary documents at the Help Center. It is her case that after the submission of the necessary documents at the Help Center, the officials at the Help Center informed her that the procedure to be followed by her was complete and that she should now go to the respondent No.3 college and pay the remainder of the fees and secure the admission to her upgraded seat. It is further case of the petitioner that she reported to the respondent No.3 college and submitted the necessary documents as well as course fees. At that point also, the documents of the petitioner so submitted were accepted by the college authorities along with the requisite course fees and even at that point of time, the college authorities did not find any deficiency in the documents so submitted by the petitioner. It is only after the final list of candidates who had confirmed admission in the 3rd round was published by the respondent No.2 on 5.5.2022 at 4:30 p.m., that it was revealed that against the name of the petitioner there was an endorsement "candidate not reported" and the seat of M.D.(Paediatrics) which was provisionally allotted to the petitioner was shown as vacant. On inquires by the petitioner, she was informed by the college authorities that she had not submitted the admission order for the upgraded course of M.D.(Paediatrics) in the 3rd round and since such an order was not generated at the Help Center by her, the seat was not confirmed and therefore, an endorsement "candidate not reported" was shown against her name. That the petitioner did approach the respondent No.2 Admission Committee for redressal of her grievance post the declaration of the final list for round 3, but the admission process being completely on-line, she was informed that no authority can intervene in the admission process till the same is complete. Left with no choice, the petitioner herein realizing that she had lost her seat and was left without admission to any PG course, again applied for the 4th Stray Vacancy round. However, she was

unsuccessful in securing any seat of PG course. The admission process for academic year 2020-2021 got completed on 7.5.2022.

11.3 In the present case, the petitioner has approached this Court immediately by filing this writ petition on 11.5.2022 for the aforementioned reliefs. By amendment dated 1.6.2022, the respondent No.5 – National Medical Commission was made a party and by a further amendment dated 27.6.2022, the Union of India was also made a party to the present proceedings. Further, the prayer clause also came to be amended accordingly. In the background of the above factual matrix, this Court now has to ascertain as to whether the authorities were only at fault in the present case and that any fault at all can be attributed to the petitioner in respect of losing of her admission to PG course. In the present case, as submitted by learned senior counsel for the respondent No.2 Admission Committee, it is not disputed that the instructions for taking admission and securing the allotted seat was common for all rounds. A successful candidate who had secured admission was issued a provisional allotment letter and on the basis of the said provisional letter, the candidate had to approach the Help Center set-up by the respondent No.2 at various colleges. Thereafter, the successful candidate had to submit all the necessary documents along with the login and password details and also a demand draft towards part payment of the fees to the allotted course. Upon submission of such documents as mentioned in the instructions to the candidates, the Help Center was to generate an admission order in favour of the successful candidate. It is not disputed that in the present case, this procedure was duly followed by the petitioner herein for securing admission to the course of M.S. (Obstetrics & Gynecology) in the 1st round. She had approached the Help Center with the relevant documents and thereafter had obtained admission order for the course of M.S. (Obstetrics & Gynecology) duly stamped and signed by the Nodal Officer on the submission of which with the respondent No.4 college, she joined the PG course on 1.2.2022. After being provisionally allotted the seat for M.D. (Paediatrics) in the respondent No.3 college in the 3rd round, the petitioner had to follow the same procedure. If the averments in the writ petition and the rejoinder and the additional affidavit as filed by the petitioner are perused, the petitioner has specifically contended that she has submitted all the necessary documents at the Help Center of the respondents. However, nowhere in the petition or in the rejoinder affidavit, the petitioner has detailed out the documents as submitted by her to the Help Center and college authorities as per the list of documents annexed with the instructions. The respondents herein have disputed the said fact of submission of all documents by the petitioner by their affidavit in reply.

In the affidavit in reply on behalf of the respondent No.2, it has been stated as follows:-

"3.13 Despite being in the knowledge of the abovesaid procedure to be followed [and having admitted the same at para 2.7 of the petition] for the purpose of confirming the admission as per her upgraded allotment (of round 3 of the

counselling) at Respondent No.3, the petitioner did not report to the help center and/or availed her admission order for payment of fees at respondent No.3 college.

3.14 Owing to the inaction of the petitioner to the above extent, though being allotted a seat in the Paediatrics Faculty at respondent No.3 college, her seat was shown as not reported. ... It may be known that the 7 candidates referred to by the petitioner at para 2.6 of the petition (highlighted in the list at ANNEXURE R11), had all reported to the regional help center and thus availed there admission as would be evident from the list (at ANNEXURE R11) itself.

3.16 Having lost her seat at respondent No.4 on account of having opted for upgradation and later losing out also on availing admission at respondent No.3 due to not reporting as per the procedure required, known to her and also admitted in the petition, the petitioner after having represented to the authorities, has approached this Hon'ble Court.

4.2 The contention raised in the present petition to contest the denial of admission to the petitioner as being erroneous is self-contradictory inasmuch as, the mandate for reporting at help center and availing an order of admission is not only within the knowledge of the petitioner but also admitted by the same. It is also further admitted position that though having followed the self-same procedure in round 1 of the admission while securing admission at respondent No.3 college, such procedure was not followed by the petitioner when it was time for her to secure admission at respondent No.4 college. It thus cannot be gainsaid that denial of admission to the petitioner is erroneous inasmuch as such denial is on account of not following the required procedure by the petitioner."

In the rejoinder affidavit at para-4, 5 and 6 (supra), the petitioner has averred thus:-

"(4) In the reply, the respondents have contended that, the petitioner did not report as per the procedure required and that the petitioner has faulted in not following the procedure for securing admission. To this, it is submitted that the petitioner is properly followed the procedure and was very much present after taking appointment of M.P.Shah Government Medical College, Jamnagar on 30th April, 2022 between 3.00 p.m. to 4.00 p.m. The deponent was present to confirm the allotted seat. When the deponent remain present before M.P.Shah Government Medical College, Jamnagar, at the help centre it was the duty of the concerned employee to see that, the original admission form with regards M.D.Gynecology is taken back and the original admission form with regards M.D.Pediatrics is handed over to the deponent. Though present timely, the concerned employee did not take back the original admission form of the petitioner which is still lying with the petitioner with regards M.D. Gynecology and did not give and hand over the petitioner the original admission form with regards M.D.Pediatrics. ... Thus, the case of the respondent that, without

remaining present at the help desk, the petitioner directly remained present before the respondent no.3 i.e. Pandit Din Dayal Upadhyay Medical College is not prove and there are evidence so that, the petitioner was present at the help centre on 30th April, 2022.

(5) The deponent states that, when she remained present on 30th April, 2022, the concerned employee at the help centre had also handed over a cheque of Rs.8,660/- to the deponent. ...

(6) Further, the deponent submits that, if the CCTV footage of the help centre dated 30.4.2022 from 3 to 4.00 p.m. is called for and perused, then it would be abundantly clear that the deponent was present at the help desk. However, it appears that due to lack of knowledge and recklessness as well as carelessness on the part of the concerned employee, the original admission form was not handed over to the deponent on 30.4.2022, on account of which currently the deponent has to loose at both the ends."

11.4 Thus, in the present case, it is seen from the averments on record that the petitioner has failed to submit the original admission order with regard to the M.S. (Obstetrics & Gynecology) course to the Help Center which was to be submitted along with the necessary documents. The explanation by the petitioner in the rejoinder affidavit is that the concerned officials at the Help Center did not take back the original admission order from the petitioner and thus, it was still lying with the petitioner and it was the fault of the officials at the Help Center who did not ask for the original admission order for M.S. (Obstetrics & Gynecology). Though it is the duty of the Help Center to guide the students with respect to securing admission which they have obtained on merits in the admission procedure, still the onus was on the petitioner to ensure that all the documents as required in the list provided with the instructions had been submitted to the Help Center and further that the new admission order for the provisionally allotted seat is generated in her favour and is taken in her possession. In this case, the petitioner was well aware of the fact that she had to approach the Help Center to generate her new admission order to confirm her provisional allotment. She had undergone same procedure while confirming her seat in the 1st round of M.S. (Obstetrics & Gynecology). It is an admitted position in view of the above mentioned averments that the petitioner did not submit the original admission order of M.S. (Obstetrics & Gynecology) to the Help Center authorities for the generation of the new admission order for the upgraded course of M.D.(Paediatrics). However, even if assuming the said aspect may have got overlooked by both the petitioner and the Help Center authorities, there is no averment by the petitioner that she had specifically asked for the new admission order be issued to her but the same was not generated and not given to her by the officials of Help Center. The petitioner herein has tried to shift the onus on the Help Center authorities for not generating the new admission order, but at the same time, this Court finds that the onus was also equally on the petitioner to ensure that the new admission order was generated and

confirmation of the seat was done in her favour. The petitioner had successfully undergone the same procedure while obtaining admission to the course of M.S. (Obstetrics & Gynecology) in the 1st round. In the circumstances, it cannot be assumed that the petitioner was completely unaware and new to the procedure of approaching the Help Center for generation of the admission order for securing the admission to the PG course. The very purpose of approaching the Help Center after the provisional allotment is only for the purpose of confirming the provisional allotment to the PG course by generating the new admission order and payment of part fees to the course allotted for confirming the same. In the present case, the averments of the petitioner are totally silent with respect to the non-generation of the new admission order. The petitioner for the first time in the rejoinder affidavit has revealed that she did not submit the vital document i.e. the old admission order and still retains the same. Thus, it has to be inferred that the petitioner did not submit all the necessary documents with the Help Center authorities as well as with the respondent No.3 college and therefore, the provisionally allotted seat to the petitioner went unreported. This Court cannot overlook the fact that once the written instructions and the procedure stipulated for the generation of the admission order for securing the admission to the provisionally allotted seat are given, the petitioner was equally duty bound to follow the same. Further, even if incomplete documents are submitted to the authorities, the onus would still remain on the petitioner to ensure that all the relevant documents are submitted even if the college authorities or the Help Center authorities do not ask for the same. The instructions clearly stated at serial No.b as follows:-

“b. Original Admission Order of ACPPGMEC of 1st Round/2nd Round”

Once the written instructions are issued to the candidates along with the provisional allotment letter with respect to the necessary documents to be submitted for the generation of the admission order, it is deemed to have been asked for by the respondent authorities and the petitioner cannot contend that the document was not asked for and therefore, she had retained the original with her and not submitted the same.

Therefore, in the opinion of this Court, the petitioner was equally at fault by not submitting the vital document at Sr.No.b above to the Help Center for generation of the new admission order. As submitted by the learned senior counsel for the respondent No.2 Admission Committee the old admission orders were required to be surrendered and cancelled by the Nodal Officer before the generation of the new admission order for the upgraded seat.

11.5 The present case, is a very unfortunate case where the petitioner who was a successful meritorious candidate in NEET-PG exam and had successfully secured admission to the course of M.S. (Obstetrics & Gynecology) in the 1st round and thereafter had successfully secured provisional admission to the upgraded course of M.D.(Paediatrics) in the 3rd round has to suffer such a fate. Further, it is also an admitted fact that she had participated in the stray vacancy

round (4th round) and she could not secure any PG seat. The law as laid down by the Hon'ble Supreme Court is that only under exceptional circumstances, if the Court finds that there is absolutely no fault attributable to the candidate and that the fault has to be only on the part of the authorities as well as due to apparent breach of rules, regulations and related principles in the process of grant of admission, then only, the Court in rarest of rare case can direct the admission of such candidate.

11.6 In the present case, the petitioner has failed to submit the previous admission order to the course of M.S. (Obstetrics & Gynecology) along with the provisional allotment letter to the Help Center authorities for generation of new admission order despite the clear cut instructions to the petitioner. It is also admitted position that the said admission order is still retained by the petitioner. Consequently, the new admission order which was to be submitted to the respondent No.3 college authorities was not done by the petitioner. Therefore, it cannot be said that the petitioner had submitted all the required documents at the Help Center as well as with the respondent No.3 college for admission to upgraded PG course of M.D.(Paediatrics). The petitioner seems to be negligent in diligently following the instructions given to the candidates by the respondent No.2. Therefore, this Court comes to the conclusion that in the present case, looking to the averments on record and the facts emerging on record, there was negligence on the part of the petitioner to obtain new admission order in her favour. In view of the settled legal position, it cannot be said that no fault can be attributed to the petitioner and that the loss of admission of the petitioner is wholly attributable to the respondents.

12. In view of the above mentioned findings of this Court, the judgments relied upon by the learned counsel for the petitioner will not be of any aid to the petitioner since the basic criteria for entitlement to relief is that there should be no fault of the candidate claiming such a relief and hence are not dealt with separately. Further, the adjudication of alternative prayer of the petitioner will also not arise. The present writ petition fails and is dismissed accordingly. Notice is discharged. There shall be no order as to costs.