

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 2nd February, 2022

+ W.P.(C) 12263/2021 & CM APPL. 38369/2021

ABHA GEORGE & ORS. Petitioners

Through: Mr. Wills Mathews, Mr. Paul
John Edison & Mr. D K Tiwari,
Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS) & ANR. Respondents

Through: Mr. Dushyant Parashar,
Advocate for R-1/AIIMS.
Mr. Rishabh Sahu, Advocate,
Central Govt Sr Counsel for R-
2/UOI [Mob 9910055066].

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

The proceedings in the matter have been conducted through video conferencing.

1. By way of this petition under Article 226 of the Constitution, the petitioners assail an Office Memorandum [hereinafter "OM"] dated 18.10.2021, issued by the respondent No.1 -All India Institute of Medical Sciences [hereinafter "AIIMS"], New Delhi, whereby their admissions to the M.Sc. Nursing course in the academic session 2021-2022 have been cancelled.

Facts

2. The facts of the case are not in dispute. AIIMS invited applications for admission to various postgraduate courses, including M.Sc. Nursing, by way of a Prospectus issued on 27.04.2021. The eligibility conditions contained in the Prospectus, as far as the M.Sc. Nursing course is concerned, read as follows:

“M.Sc. Nursing

- i) B.Sc. (Hons.) Nursing /B.Sc. Nursing (Post-Certificate)/Post-Basic /B Sc. Nursing (4years) course from any recognised University, from an educational institution Recognised by the Indian Nursing Council, with 60% marks for Gen/OBC/NCL)/EWS candidates (55% marks in case of SC/ST candidates).*
- (ii) Registration as Nurse, RN, RM (Registered Nurse, Registered Midwife) with any State Nursing Council.*

Note 1: For Indian Nationals, 5% reservation for Person with Benchmark Disability shall be provided on horizontal basis, in the seat available in M.Sc. Nursing courses. Eligibility criterion for candidates under this category as per the guidelines finalized by Nursing Council of India as amended from time-to-time.

Note 2: For M.Sc/ M.Biotechnology and M.Sc. Nursing Courses :- Candidates who are due to appear at the qualifying examination, or have already appeared and are awaiting result, can also apply for admission but such candidate must furnish:

- **Proof of passing the qualifying examination on or before 31st July, 2021 with requisite percentage of marks and subjects failing***

which their performance at the Entrance Examination will not be considered.

- All M.Sc. Nursing Candidates can submit certificate of Registration as a Nurse and Midwife from the Indian Nursing Council/State Nursing Council at the time of Seat Allocation/joining if they are selected.
- All selected candidates for M.Sc. Nursing courses are required to furnish the proof of recognition of their college at the time of verification of their documents.”¹

3. The petitioners, who were students in the B.Sc. Nursing course in AIIMS, New Delhi, applied for admission pursuant to the Prospectus. They were issued offer letters by AIIMS on 18.08.2021, which *inter alia* indicated the speciality, and the regional centre of AIIMS in which they were offered admission. The petitioners joined their respective courses on 24.08.2021, as required, and were duly enrolled by the respective regional centre of AIIMS.

4. Approximately two months thereafter, by the impugned OM dated 18.10.2021, issued by AIIMS, New Delhi, their admissions were cancelled. It was stated in the OM that the matter had been examined by the competent authority, and “*due to discrepancy found in the admissions, it has been decided that all erroneous admissions mentioned below need to be cancelled*”. The reason for cancellation of their admissions, as mentioned in the OM, is as follows:

“B.Sc. Nursing final year Result declared on 7th Aug, 2021 beyond the cutoff date i.e. 31st July 2021 (as mentioned in the prospectus)”

¹ Emphasis supplied.

5. The petitioners thereafter filed the present writ petition challenging the OM dated 18.10.2021.

6. By an interim order dated 28.10.2021, the petitioners were granted interim relief of *status quo* with regard to their admissions. They have continued to study in their respective courses during the pendency of this writ petition.

Submissions

7. Mr. Wills Mathews, learned counsel for the petitioners, submits that the cancellation of the petitioners' admissions after they had joined the course, on the ground that they were ineligible for admission, is unwarranted and contrary to law. He submits that no allegation of any wrongdoing has been levelled against the petitioners; they have not been accused of any misrepresentation or suppression of facts, which led to the admission being granted despite their ineligibility. All the petitioners were, in fact, students of AIIMS itself in the B.Sc. Nursing course, which is the qualifying examination for the purposes of admission to the M.Sc. Nursing. The delay in the results of their qualifying examination was, therefore, not only known to AIIMS, but a consequence of matters within its own control. Mr. Mathews points out that, in the year 2020, AIIMS had extended the period under the eligibility conditions until 31.08.2020, but a similar extension has not been granted in the year 2021.

8. In order to buttress his submissions, Mr. Mathews relies upon judgments of the Supreme Court in *A. Sudha vs. University of Mysore*

*and Another*² and *Dolly Chhanda vs. Chairman, JEE And Others*³, as well as the judgments of this Court in *Javed Akhtar and Another vs. Jamia Hamdard & Another*⁴, and *Bessy Edison and Another vs. Indira Gandhi National Open University & Ors*⁵.

9. Mr. Dushyant Parashar, learned counsel for AIIMS, on the other hand, submits that the petitioners admittedly did not meet the eligibility criteria specified in the Prospectus on the stipulated date. He emphasises that the eligibility criteria stipulated in the Prospectus requires candidates to have proof of passing the qualifying examination before 31.07.2021, whereas the results of the petitioners' qualifying examination was declared only on 07.08.2021.

10. Mr. Parashar refers me to Clause 9 of Section 13 of the Prospectus⁶, to submit that the Prospectus itself contemplated that admissions would be provisional, and subject to cancellation at any time. The said clause reads as follows:

“9. Admission of the candidates to the entrance examination is provisional. If ineligibility of a candidate is detected at any stage, his/her candidature for examination/admission will be cancelled.”

11. Mr. Parashar argues that the petitioners were found to have been admitted despite their ineligibility, and their admissions were, therefore, cancelled in due exercise of the powers of AIIMS under the said clause. He submits that an institution ought not to be compelled to

² (1987) 4 SCC 537 [paragraphs 17 & 18].

³ (2005) 9 SCC 779.

⁴ Judgment dated 05.12.2006 in W.P.(C) No. 15257-58/2006.

⁵ Judgment dated 26.10.2010 in W.P.(C) No. 5604/2010.

⁶ “Important Instructions”.

perpetuate an error, in departure from the eligibility conditions mentioned in the prospectus itself, and relies upon the judgment of this Court in *Varun Kumar Agarwal vs. Union of India & Ors*⁷ in this connection.

12. Finally, Mr. Parashar states that the relief sought by the petitioners would lead to a wholly iniquitous situation, as several other candidates, whose results were also declared on or before 07.08.2021, were rejected on the same ground.

Analysis

13. In the undisputed factual situation narrated above, the question which arises for consideration is whether the admission of a candidate, even if he/she is erroneously admitted, is liable to be cancelled in the absence of any wrongdoing or default on the part of the candidate. This question has been considered in several judgments of the Supreme Court and of this Court. Three judgments of the Supreme Court, and one of this Court, are particularly instructive for adjudication of the present dispute.

14. In *Rajendra Prasad Mathur vs. Karnataka University*⁸, the Supreme Court was concerned with a question of cancellation of admissions in engineering courses in Karnataka University. During the pendency of the writ petition before the High Court, the petitioners were permitted to continue their studies in the college. The petitions were, however, ultimately dismissed by the High Court, and the Supreme Court also came to the conclusion that the candidates were

⁷ Judgment dated 03.03.2011 in LPA 599/2010.

⁸ (1986) Suppl SCC 740.

ineligible for admission. However, on the question of whether the students, having been admitted, should be permitted to continue their studies, the Court held in their favour for the following reasons:-

*“8. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. **But the question still remains whether we should allow the appellants to continue their studies in the respective engineering colleges in which they were admitted.** It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective engineering colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. **Now it is true that the appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants.** It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year BSc examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year BSc examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. **The fault lies with the engineering colleges which admitted the appellants because the Principals of these engineering colleges must have known that the appellants were not eligible for***

admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges. We would therefore, notwithstanding the view taken by us in this Judgment, allow the appellants to continue their studies in the respective engineering colleges in which they were granted admission. But we do feel that against the erring engineering colleges the Karnataka University should take appropriate action because the managements of these engineering colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the engineering degree course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his Judgment with a view to preventing admission of ineligible students.”⁹

15. This judgment was followed by the Supreme Court *inter alia* in *A. Sudha*¹⁰, which was also cited by Mr. Mathews. The candidate in that case was also ineligible, and was permitted to prosecute her studies in MBBS course in the respondent-institution.

16. The judgment of the Supreme Court in *Ashok Chand Singhvi vs. University of Jodhpur and Ors*¹¹, is also on similar lines. In that case, the Supreme Court did not accept the explanation of the concerned university that the candidate had been mistakenly admitted, but also clarified¹² that even if that had been the case, the principle in *Rajendra*

⁹ Emphasis supplied.

¹⁰ Supra (note 2).

¹¹ (1989) 1 SCC 399.

¹² Supra (note 11), paragraph 17.

*Prasad Mathur*¹³, would have been followed as the candidate was not at fault.

17. In *Javed Akhtar*¹⁴, a co-ordinate bench of this Court considered a case where the petitioners' candidature was accepted for appearing in the entrance examinations, and they were admitted to the concerned institution. Their admissions were cancelled after they had attended the classes for one month. The facts of the case are very similar to the present case. The question framed by the Court was in the following terms:-

*"21. ... This is not disputed that the petitioners filled the forms for appearing in the entrance examination and gave their correct date of birth. The forms of the petitioners were considered and they were allowed to appear in the examination. After their names appeared, they were called for counselling and after verifying the documents and certificates of the petitioners, they were given admission. The petitioners were issued identity cards after accepting the fees for the course from them and the petitioners were allowed to attend classes for a month and thereafter by communication dated 8th August, 2006 the admission of the petitioners have been cancelled. **Whether the respondent no. 1 can be allowed to cancel the admission mid term in the facts and circumstances, when the petitioners have not concealed any thing nor produced any documents to mislead the respondent no. 1? Whether the respondent no. 1 will be estopped from canceling the admission of the petitioners in the facts and circumstances?**"*¹⁵

The Court answered the question thus:-

¹³ Supra (note 8).

¹⁴ Supra (note 4).

¹⁵ Emphasis supplied.

“38. Therefore, while granting the admission if the academic body has acted inattentively and mechanically, then they cannot be allowed to take the plea that the admission was never valid and that the petitioners' were ineligible from the very inception and knowing the ineligibility they applied for admission. The respondents cannot be allowed to cancel the admission at their own convenience at any time of the year without considering the fact that if they cancel the admission after the session has started then the entire year of the petitioners will be spoiled as the petitioners would not be in a position to take admission in any other college/University. If this fact of their ineligibility for admission was conveyed to them at the very start they would have taken admission in some other college/University.

39. In such situation, in view of the decision in Sangeeta's case(Supra), the petitioners cannot be penalized for the negligence of authorities. It is important to appreciate that the petitioners in the facts and circumstances cannot be accused of making any false statement or suppressing any relevant fact before anybody. They clearly mentioned their Date of Birth in the application form for admission, and are not guilty of any fraud or misrepresentation. It was the duty of the University to have scrutinized the application form and the certificates thoroughly before granting admission to the petitioners and permitting them to attend the classes and not having done so they cannot cancel the admission thereafter. By accepting the application form and subsequently granting admission representation was made by the respondents that the petitioners' were eligible for admission and the petitioners' acting upon the same took admission and thus the petitioners' suffered a detriment. Had the respondents not made the representation that the application had been approved and granted admission the petitioners' would have applied and taken admission else-where. Therefore the

respondents are estopped from pleading that the petitioners were not entitled to a seat from the inception and that the admission is void ab initio and that the admission without fulfilment of the eligibility criteria is a nullity.

*40. In the facts and circumstances of the case the respondents cannot be allowed to take advantage of their own wrong and cannot be permitted to take the plea that under the prospectus they had the power to cancel the admission of ineligible student and the principle of estoppel will operate against them. The respondents are estopped from cancelling the admission of the petitioners' and further from preventing them from pursuing the 'Pre Tib' course in the present facts and circumstances.'*¹⁶

18. Applying these authorities in the present case, it appears that the petitioners' documents were accepted by the respective centres of AIIMS, despite the fact that their qualifying examination results were declared one week later than stipulated in the Prospectus. The petitioners have prosecuted their studies for almost two months prior to issuance of the impugned OM dated 18.10.2021. There is no allegation that the petitioners had misrepresented or concealed any information from AIIMS - indeed, there cannot be, as the qualifying examination was conducted by AIIMS itself. Applying the observations of the Supreme Court in *Rajendra Prasad Mathur*¹⁷, in the present case also, the blame lies more upon the institution than the petitioners. The candidates applied; their results were declared by AIIMS, New Delhi; those results were submitted to the regional

¹⁶ Emphasis supplied.

¹⁷ Supra (note 8), paragraph 8.

centres to which they have been assigned, and they were granted admission. Their admissions were cancelled after they had spent almost two months on the course. The judgment of this Court in *Javed Akhtar*¹⁸, in fact, goes further to hold that an academic institution cannot be permitted to cancel admissions after the course had started, at any time during the year, due to prejudice that would be caused to the candidates who were admitted as they would by then be unable to take admission in any other university to which they may have been admitted.

19. The issue thus appears to me to be squarely covered by the aforesaid judgments of the Supreme Court and this Court. Although there were express representations of the institutions to the candidates regarding their eligibility in some of the cases, I am of the view that the absence of such an express representation does not make much difference in the facts of the present case. No further representation was expected or required as there was no doubt as to the substantive conditions of eligibility stipulated in the Prospectus, although the result had come one week later than stipulated.

20. While considering the equitable relief to be granted in these circumstances, I also requested Mr. Parashar to take instructions as to the fate of the seats which would be released by the petitioners if the impugned OM were to be upheld. Mr. Parashar, upon instructions, fairly submitted that due to the lapse in time after the start of the course, those seats would remain vacant.

¹⁸ Supra (note 4).

21. Turning now to the two other judgments cited by Mr. Mathews, they do not, in my view, apply to the facts of this case. In *Dolly Chhanda*¹⁹, the petitioner therein had been wrongly rejected for admission and the Supreme Court directed that she should be given admission in the MBBS course in the next academic year. This is not relevant to the question which arises in the present case. In *Bessy Edison*²⁰, the issue before the Court was different from the present case. It concerned approval of a particular study centre for the purposes of Post-Basic B.Sc. in Nursing qualification offered by the Indira Gandhi National Open University [hereinafter “IGNOU”]. The Court found that IGNOU was under a *bona fide* belief that it was not required to obtain approval from each of its study centre, and that the petitioners had taken admission in the belief that the centre was recognized by the Indian Nursing Council. The Court held that the examination having been conducted by the University itself, equity was in favour of grant of relief, and relied upon the wide powers of the Court under Article 226 of the Constitution to grant relief to the petitioners therein.

22. The conditions of the Prospectus, cited by Mr. Parashar, and the judgment of this Court in *Varun Kumar Agarwal*²¹, also do not lead me to a contrary conclusion. Clause 9 in Section 13 of the Prospectus concerns admission “to the entrance examination”. In my view, the Clause, as it stands, provides for cancellation of the candidature for the admission examination. In any event, even on the assumption that

¹⁹ Supra (note 3).

²⁰ Supra (note 5).

²¹ Supra (note 7).

AIIMS was vested with the power to cancel the petitioners' admissions, for the reasons aforesaid, I have come to the conclusion that the power ought not to have been exercised in the present case. The judgment in *Varun Kumar Agarwal*²², provides that the conditions of the brochure are mandatory. That proposition is well settled. However, the question in the present case is not of applying the eligibility conditions to deny admission to a particular candidate, but of cancellation of an admission after it has been granted, and the candidate has taken his/her place in the university/institution. There may be cases where the ineligibility is such as to militate against the grant of equitable relief even to an admitted candidate. The present situation is, however, covered by the decisions of the Supreme Court and this Court as stated above, and I see no reason, in law or equity, to differ from the conclusions reached therein.

23. As far as Mr. Parashar's contention with regard to the similarly placed candidates is concerned, it is made clear that the present petition concerns a case of cancellation of admissions once granted, as dealt with in the aforesaid judgments of the Supreme Court and this Court. The Court is not faced with a claim for admission by a candidate who has not been granted admission, which is contested as being contrary to the eligibility conditions contained in the admissions brochure. It is, therefore, not necessary to comment further on the fate of those other candidates in the context of the facts and circumstances of the present case.

²² Supra (note 7).

Conclusion

24. For the reasons aforesaid, the writ petition is allowed, and the impugned OM dated 18.10.2021 issued by AIIMS, New Delhi, so far as it concerns the petitioners herein, is set aside. Pending application also stands disposed of.

25. There will be no order as to costs.

PRATEEK JALAN, J

FEBRUARY 2, 2022

'hkaur'

