Chandigarh Administration & Anr vs Jasmine Kaur & Ors on 1 September, 2014

Equivalent citations: AIR 2015 SUPREME COURT 34, 2014 AIR SCW 5632 AIR 2014 SC (CIVIL) 2656, AIR 2014 SC (CIVIL) 2656

Bench: Fakkir Mohamed Ibrahim Kalifulla, Shiva Kirti Singh

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8377-8378 OF 2014
(@ SLP (C) NOS.18137-18138 OF 2014)

Chandigarh Administration & Another …Appellants

VERSUS

Jasmine Kaur & others …Respondents

With

CIVIL APPEAL NO.8376 OF 2014
(@ SLP (C) NO.18099 OF 2014)

Jessica Rehsi …Appellant

VERSUS

Chandigarh Administration & Ors. …..Respondents

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

Leave granted.

These appeals have been preferred against the orders passed by the Division Bench of the Punjab and Haryana High Court at Chandigarh in LPA No.2051 of 2013 dated 13.01.2014 and C.M. No.623 of 2014 in RA No.9 of 2014 in LPA No.2051 of 2013. The Appellants in SLP(C) No.18137-18138 of 2014 are the Chandigarh Administration and the Government Medical College & Hospital, Chandigarh. The Appellant in SLP(C) No.18099 of 2014 has filed the Special Leave Petition with the permission of this Court, who was not a party, either before the Single Judge or before the Division Bench of the Punjab and Haryana High Court.

Leave to file Special Leave Petition was granted in SLP(C) No.18099/2014 considering the grievances expressed by the said Appellant contending that in the event of the impugned orders of the Division Bench being implemented, her chance of getting admission to the course of M.B.B.S. for the academic year 2014-15 under the Non-Resident Indian (NRI) category would be impinged.

The present impugned orders of the Division Bench came to be passed at the instance of the contesting Respondent in both the Civil Appeals who was really aggrieved of a clause in the prospectus issued by the Appellants in SLP(C) No.18137-18138 of 2014 (hereinafter called "the Chandigarh Administration and the Government Medical College Chandigarh"), which according to her was not valid. According to the contesting Respondent, she being a Canadian Citizen is an NRI, that, therefore, she was entitled to seek admission to the M.B.B.S. course in the NRI category quota but yet the definition of NRI as specified in the prospectus issued by the Chandigarh Administration and the Government Medical College, Chandigarh for the academic year 2014-15 would denude her of such status and, therefore, it was liable to be struck down. The said definition, which was contained in paragraph 2 of the prospectus of 2013-14, was as under:

> "2. Eligibility and Merit for NRI seats (03 Seats) for MBBS Course:
>
> In addition to the general conditions above, under the NRI Category 03 seats shall be filled up as per preference order of Category 1 and 2, given as under:-
>
> First preference will be given to those NRI candidates who have ancestral background of Chandigarh (Category 1):
>
> For ancestral background of Chandigarh, the grandparents/parents of the candidates should be resident of Chandigarh for a minimum period of 5 years at anytime since the origin of Chandigarh and should have immovable property in his/her name in Chandigarh for the last at least 5 years. A certificate to this effect is required from DC-cum-Estate Officer or Municipal Corporation of Chandigarh.
>
> Second preference will be given to those NRI candidates who have ancestral background of States/UTs other than UT Chandigarh (Category 2). A certificate regarding ancestral background of the other State/UT from the competent authority is to be submitted in case of students with ancestral background of other States/UTs.
>
> There will be no separate test/entrance test for the candidates applying for NRI/Foreign Indian Student. These candidates will have to obtain the eligibility & equivalence certificate for their qualifying examination from the Punjab University, Chandigarh. (as mentioned in general condition point no.f)" The contesting Respondent claimed that her grand-father retired as an Under Secretary in the year 1994, that when he was in the services of the State of Chandigarh he resided in a Government house from 1965 to 1984 and shifted to another Government accommodation provided by the Chandigarh Administration from 1984 to 1994, that third set of government accommodation was provided by the Government to the

father of the contesting Respondent which was occupied till December 2003 and that thereafter, her father started living in the house of her grandfather in Mohali. The contesting Respondent claimed that she passed as a regular student from Mohali, that the prescription contained in paragraph 2 of the prospectus providing for eligibility and merit for NRI seats for M.B.B.S. course stipulating that the grandparents/parents of the candidates should be resident of Chandigarh for a minimum period of 5 years at any time since the origin of Chandigarh and should have immovable property in his/her name in Chandigarh for the last at least 5 years and a certificate to that effect issued by DC- cum-Estate Officer or Municipal Corporation of Chandigarh was not valid. It was on that footing that a challenge came to be made by the contesting Respondent in the High Court in CWP No.14320 of 2013 (O&M). The learned Single Judge by order dated 27.09.2013 held that the impugned clause was totally impracticable, illegal, illogical and declared as such. However, the learned Single Judge went further into the question as to whether the contesting Respondent can be granted admission at that stage when she was already admitted into the B.D.S course in Chandigarh itself and that when the contesting Respondent did not challenge the eligibility criteria before submitting her application for the M.B.B.S. course, ultimately held that the contesting Respondent was not entitled to any relief for getting admission into M.B.B.S. course.

The order of the learned Single Judge was not challenged by the Chandigarh Administration or the Government Medical College of Chandigarh. The contesting Respondent filed Letters Patent Appeal in LPA No.2051 of 2013 as against that part of the judgment by which she was denied admission to the M.B.B.S. course. The Division Bench by its Order dated 13.01.2014 held that when once the definition clause of NRI was found to be invalid by the learned Single Judge, the contesting Respondent ought to have been granted admission into M.B.B.S. course. By the time the Division Bench passed its order on 13.01.2014, since the process of admission to the M.B.B.S. course had already come to an end and all seats were filled up, the Division Bench held that in order to do substantive justice to the contesting Respondent and at the same time without causing any disadvantage to the already admitted candidates under the NRI category held that the contesting Respondent should, however, be held to be entitled to admission in the M.B.B.S. course without displacing any other candidate by stating that such admission should be granted even if it required creation of an additional seat and a direction to that effect was accordingly made.

A review was filed at the instance of the Chandigarh Administration contending that when the administration took steps to implement the direction of the Division Bench by approaching the Medical Council of India (MCI) for creating an additional seat, the said requisition of the administration was turned down by the MCI and, therefore, it was not in a position to accommodate the contesting Respondent. The Chandigarh Administration, therefore, sought for review of the order of the Division Bench, insofar as it related to the grant of admission to the contesting Respondent by

creating an additional seat.

The Division Bench realizing the predicament in which the Chandigarh Administration was placed, felt that the case of the contesting Respondent was a rarest of rare one in which the relief of admission to the M.B.B.S. course should be provided to her by relying upon the decisions of this Court in Asha v. PT. B.D. Sharma University of Health Sciences and others reported in 2012 (7) SCC 389 and Priya Gupta v. State of Chhattisgarh and others reported in (2012) 7 SCC 433 and directed that the contesting Respondent be accommodated in the academic session 2014-15 instead of 2013-14, with a condition that she should pursue her M.B.B.S. course right from the beginning without claiming any advantage of the course which she undertook in the B.D.S. in the year 2013-14. The Division Bench was conscious of the fact that by issuing such a direction to be implemented in the academic session 2014-15, it would result in reduction of one seat for the applicants of that Academic Session under the NRI category.

The Chandigarh Administration and the Government Medical College, Chandigarh were aggrieved by the said direction and preferred SLP(C) No.18137-18138 of 2014. The Appellant in SLP(C) No.18099 of 2014 was aggrieved inasmuch as she is an applicant of the Academic Session 2014-2015 and but for the direction issued by the Division Bench under the impugned order dated 21.02.2014, she would get the admission in the M.B.B.S. course, as she is ranked in the sixth place. Because of the admission of the contesting Respondent by way of implementation of the order of the Division Bench, the said Appellant has been deprived of the seat.

One other candidate who got himself impleaded in I.A. Nos.2-3 of 2014 who supported the stand of the Appellant in SLP(C) No.18099 of 2014 is in the fifth place of the merit list of NRI category. According to the said newly added Respondent, after the decision of the Division Bench dated 21.02.2014, a corrigendum came to be issued by the Chandigarh Administration wherein a provision has been made to the effect that one NRI seat is reserved for Scheduled Caste NRI and that if it could not be filled up by a Scheduled Caste NRI, then only the said seat would revert to the Scheduled Caste Union Territory Resident Pool. The grievance of the said impleaded Respondent is that if the said corrigendum is given effect to, the total number of seats under NRI quota for the open category would get reduced to five and as a sequel to it, the implementation of the direction of the Division Bench under the orders impugned in these appeals would directly affect the said newly added Respondent. It is, however, submitted that the said newly added Respondent has challenged the corrigendum issued on 19.06.2014 before the High Court and that the same has also been stayed by the High Court by order dated 09.07.2014. It is further submitted that after granting stay, the High Court also issued directions for the admission of newly added Respondent as per the list of successful candidates declared in the proceedings of the Chandigarh Administration and the Government Medical College, Chandigarh dated 23.06.2014, in which the name of the said impleaded Respondent found place at serial No.5.

In the above stated background, we heard Mr. Nidhesh Gupta, learned Senior Counsel for the Appellant in SLP(C) No.18099 of 2014, Mr. Shubham Bhalla, learned Counsel for the Appellant in SLP(C) Nos.18137-18138 of 2014, Mr. Guru Krishna Kumar, Senior Counsel for the contesting Respondent in SLP(C) No.18137-18138 of 2014 & Respondent No.4 in SLP(C) No.18099 of 2014,

Mr. Narender Hooda, learned Senior Counsel for Respondent No.2 in SLP(C) Nos.18137-18138 of 2014 & Respondent No.5 in SLP(C) No.18099 of 2014, Mr. Gaurav Sharma, Advocate-on-Record (AOR) for MCI and Mr. Ashok Mahajan, AOR for the newly impleaded Respondents.

Mr. Nidhesh Gupta, learned Senior Counsel for the Appellant in SLP(C) No.18099 of 2014 prefaced his submissions by referring to the belated point of time at which the contesting Respondent approached the High Court seeking for the relief and, therefore, even though the learned Single Judge held that the condition prescribed in paragraph 2 of the prospectus for the first category of NRI quota was invalid, the relief was not rightly granted. In fact, the entire submission of learned Senior Counsel was mainly premised on the belated approach of the contesting Respondent in seeking for the relief and that to knowing full well that she was not entitled to seek for admission under the first category of NRI. Based on the above submission, the learned Senior Counsel by relying upon various decisions of this Court contended that the principles laid down in those decisions certainly did not entitle the contesting Respondent to get any admission out of turn either in the relevant year in which she applied, namely, 2013-14 or in the academic session 2014-15. According to the learned Senior Counsel, when the contesting Respondent knew full well that she did not satisfy the criteria prescribed in relation to category I of NRI quota as stipulated in paragraph 2 of the prospectus, which was published in April 2013, for no comprehensible reason she waited almost till the last date for filing the application, whereas in actuality, to challenge the stipulation contained in the said paragraph on the ground of invalidity, there was no necessity to file the application nor wait for any response from the Chandigarh Administration or the Government Medical College. The contention of the learned Senior Counsel was on the footing that since the contesting Respondent did not display the required promptness in approaching the Court, the various decisions of this Court by which it has laid down that the schedule relating to admission to the professional colleges, should be strictly adhered to and should not be deviated under any circumstances had to be scrupulously followed, which thereby persuaded the learned Single Judge not to grant the relief of admission to the college after 30.09.2013. The learned Senior Counsel, therefore, contended that this was not a case where any of the situations wherein admission to a candidate was directed to be given for certain stated reasons by this Court after the expiry of the prescribed admission scheduled or for any admission which was directed to be given in the subsequent academic year could be followed. In other words, the learned Senior Counsel contended that there was no exceptional circumstance that was existing in the case of the contesting respondent in order to deviate from the schedule fixed in the matter of admission to the professional courses, which was time and again directed to be adhered to scrupulously by this Court without any deviation. In support of the above submissions learned Senior Counsel relied upon the decisions in Parmender Kumar and others v. State of Haryana and others – (2012) 1 SCC 177, Madan Lal and Others v. State of J & K and others - (1995) 3 SCC 486, Ramana Dayaram Shetty v. International Airport Authority of India and others - (1979) 3 SCC 489, Dr. Indu Kant v. State of U.P. and others - (1993) Suppl. (2) SCC 71, Asha (supra), Rajiv Kapoor and others v. State of Haryana and others - (2000) 9 SCC 115, Aneesh D. Lawande and others v. State of Goa and others - (2014) 1 SCC 554, Subhash Chandra and another v. Delhi Subordinate Services Selection Board and others - (2009) 15 SCC 458.

As against the above submissions, Mr. Guru Krishna Kumar, learned Senior Counsel who appeared for the contesting Respondent in his submissions contended that the direction of the Division Bench of the High Court has to be considered in light of the principle of moulding of the relief when injustice was found. According to him, a distinction must be drawn in the peculiar undisputed facts of this case wherein, the challenge made by the contesting Respondent was held to be valid in so far as the prescription of the condition to seek admission under the first category of NRI quota and, therefore, when the learned Single Judge failed to grant the relief, the Division Bench took into account the extraordinary circumstance which was prevailing in the interest of justice and gave the directions without causing any prejudice to other candidates of the relevant academic year, as well as, in the present academic year where the merit of the contesting Respondent was far superior to the candidates who have been enlisted for admission under NRI quota of the first category. It was then submitted that while issuing such directions, the Division Bench ensured that there was no carry forward nor any telescoping into the seats of the subsequent year. The learned Senior Counsel submitted that the question of telescoping would arise only if the unfilled seats of the previous year are to be accommodated in the subsequent year and that in the case on hand, it did not relate to any unfilled seat of the previous year and, therefore, the direction of the Division Bench cannot be held to fall under the category of telescoping into the seats of the subsequent year. The learned Senior Counsel contended that the same principle will apply even to the carry forward principle and, therefore, when none of the said allegations are levelled against the contesting Respondent or directed against the judgment of the Division Bench, the Civil Appeal does not merit any consideration. The learned Senior Counsel pointed out that the decision of the learned Single Judge in having declared the relevant clause as invalid has become final and neither the Chandigarh Administration nor the Government Medical College or for that matter the Appellant in SLP(C) No.18099 of 2014 have raised any challenge. According to him, the only other aspect to be examined was the entitlement of the contesting Respondent for M.B.B.S. seat under the NRI quota under which category the said contesting Respondent secured the highest marks based on which her rank can be fixed in the third place in the order of merit for the year 2014-15 and, therefore, allotment of seat ought to have been granted without any hassle. The learned Senior Counsel further pointed out that the contesting Respondent had the benefit of her application to be entertained by way of an interim direction pending her writ petition apart from permitting her to participate in the counselling, though subject to the result of the writ petition. The learned Senior Counsel, therefore, contended that when the substantive challenge of the contesting Respondent was accepted by the learned Single Judge, the only other order that could have been passed was to direct the Chandigarh Administration and the Government Medical College to consider the claim of the contesting Respondent on merits for the grant of the seat. The learned Senior Counsel, therefore, contended that when the learned Single Judge committed a grave error in not granting the relief, the Division Bench had to staple and issue necessary directions.

In support of the above submissions, the learned Senior Counsel relied upon the decisions reported in Faiza Choudhary v. State of Jammu and Kashmir and another - (2012) 10 SCC 149, Madhu Singh (supra), Shafali Nandwani v. State of Haryana and others - (2002) 8 SCC 152, Rajiv Kapoor (supra), Bhawna Garg & another v. University of Delhi & others - (2012) 8 SCALE 504, Dwarkanath, Hindu Undivided Family v. Income-Tax Officer, Special Circle, Kanpur and another - (1965) 3 SCR 536, State of Punjab v. Salil Sabhlok and others - (2013) 5 SCC 1, Miss Neelima Shangla, PH.D. Candidate

v. State of Haryana and others - (1986) 4 SCC 268 and Haryana Urban Development Authority and others v. Sunita Rekhi - (1989) Suppl. 2 SCC 169.

Having heard learned counsel for the respective contesting parties, namely, the Appellant in SLP(C) No.18099 of 2014 and the contesting Respondent in both the Civil Appeals who is the contesting Respondent, since heavy reliance was placed upon by both the respective counsel on the earlier decisions of this Court to support their respective contentions that the case of the contesting Respondent would either fall under one or the other principles laid down in those decisions or that the facts of those cases are clearly distinguishable, we feel it appropriate to refer to the relevant principles contained in those decisions before venturing to express our decision as regards the correctness or otherwise of the direction issued by the Division Bench in favour of the contesting Respondent.

In the decision reported in Parmender Kumar (supra), it was held that once the process of selection of candidates for admission had commenced on the basis of the prospectus, no change could thereafter be effected by government orders to alter the provisions contained in the prospectus. In the decision reported in Madan Lal (supra), it was held that if a candidate takes a calculated chance and appears at the interview then only because the result of the interview is not palatable to him he cannot turn around and subsequently contend that the process of interview was unfair and the selection committee was not properly constituted. By relying upon the above referred to decisions, the contention raised on behalf of the Appellant in SLP(C) No.18099 of 2014 was that the condition relating to the NRI quota under the first category was prevalent at the time when the contesting Respondent submitted her application and having submitted the said application and participated in the selection process, merely because the said clause was subsequently found to be not valid, would not, on that ground, validate the contesting respondent's right to claim admission.

In fact, the other decisions, namely, Om Prakash Shukla v. Akhilesh Kumar Shukla and others - (1986) Suppl. SCC 285, Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others - (2011) 1 SCC 150, K.A. Nagamani v. Indian Airlines and others - (2009) 5 SCC 515, Dhananjay Malik and others v. State of Uttaranchal and others - (2008) 4 SCC 171 and Chandra Prakash Tiwari and others v. Shankuntala Shukla and others - (2002) 6 SCC 127 were all referred to by the learned Senior Counsel for the Appellant in SLP(C) No.18099 of 2014 to show that the statement made in Madan Lal was relied upon in those decisions.

Mr. Nidhesh Gupta, learned Senior Counsel, therefore, contended that the effect of the directions of the Division Bench was that the contesting Respondent was to be admitted into the M.B.B.S. course in the academic year 2014-15 without competing with the claims of the other candidates who applied for the said course in the said academic year. It was also contended that even in the academic year 2013-14, she did not compete along with the other similarly placed candidates but was allowed to participate in the counselling pursuant to the interim direction issued by the learned Single Judge during the pendency of the writ petition and that to was subject to the outcome of the writ petition. The learned senior counsel, therefore, contended that the contesting Respondent was not entitled for any equitable relief. The learned Senior Counsel, therefore, contended that the direction of the Division Bench cannot be sustained.

In this context, reliance was placed upon the three-Judge Bench decision of this Court reported in Rajiv Kapoor (supra), wherein in paragraph 16 this Court has held as under:

> "16. The dispute relates to the academic session of the year 1997 and we are in 2000. To utilise the seats meant for the next academic year by accommodating those candidates of 1997 vintage would amount to deprivation of the legitimate rights of those who would be in the fray of contest for selection, on the basis of their inter se merit for the session of 2000, taking into account the performance of the candidates of 1997 in that year....." It was submitted that the selection of candidates should be based on the inter se merits of the candidates of that year and, therefore, entertaining the claim of a candidate who applied in any previous year would cause grave injustice, as those who were not in the fray of competence would thus be permitted to compete with the lawfully eligible applicants of the subsequent years, which would certainly cause serious prejudice to those candidates.
>
> To the very same effect was the decision reported in Neelu Arora (Ms) and another v. Union of India and others - (2003) 3 SCC 366, which was also by a three Judge Bench of this Court. The learned Senior Counsel for the Appellant in SLP(C) No.18099 of 2014 sought to distinguish the decision relied upon by the Division Bench reported in Asha (supra) by pointing out that the said decision turns upon the special facts of that case, where this Court reached a finding of fact that the candidate concerned was not at fault and the whole fault was on the authorities concerned in not allowing the said candidate to participate in the counselling for admission to the M.B.B.S. course in spite of the fact that her merit as compared to other candidates who were granted admission was far superior and that she approached the Court for the redressal of her grievance at the earliest. The learned Senior Counsel by drawing our attention to paragraphs 32, 34 and 37 of the decision submitted that the said decision cannot be simply followed as a matter of course as has been done by the Division Bench in the case on hand. The learned Senior Counsel also once again brought to our notice the manner in which the contesting Respondent herein approached the Court, made the application and filed the writ petition after a considerable length of delay and thereby disentitled her to seek for any relief much less there was any scope for moulding the relief as had been done by the Division Bench by the impugned order.
>
> The recent decision of this Court reported in Aneesh D. Lawande (supra) was relied upon by the learned counsel for the Appellant wherein this Court has culled out two main principles to be kept in mind in such cases. In paragraph 30, the said principles have been laid down and in paragraph 35, this Court has reiterated as to why it will not be proper to issue directions to adjust the students of one academic year in any subsequent academic year by pointing out that such a course would affect the other meritorious candidates who would be aspiring to get admissions in the subsequent years. It was stated that for bringing equity to some in praesenti, this Court cannot afford to do injustice to others in future. The said paragraph 35 can be usefully referred to which reads as under:

"35. The next submission relates to the issue whether the students who cannot be adjusted in the seats of All-India quota that have been transferred to the State quota of this year can be adjusted next year. During the course of hearing though there was some debate with regard to giving of admissions to such students in the academic year 2014-2015, Mr. Amit Kumar, learned counsel for the Medical Council of India, has seriously opposed the same and, thereafter, has cited the authorities which we have referred to hereinbefore. We are bound by the said precedents. In certain individual cases where there is defective counselling and merit has become a casualty, this Court has directed for adjustment in the next academic session but in the case at hand, it is not exactly so. Though we are at pains, yet we must express that it will not be appropriate to issue directions to adjust them in respect of the subsequent academic year, for taking recourse to the same would affect the other meritorious candidates who would be aspirant to get admissions next year. For doing equity to some in praesenti we cannot afford to do injustice to others in future. Therefore, the submission stands repelled." (underlining is ours) The decision relied upon by the contesting Respondent reported in Faiza Choudhary (supra), rather than supporting the case of the said contesting Respondent only clarifies the legal position without any ambiguity. The principles have been succinctly explained in paragraphs 14 and 15 to the effect that there cannot be any telescoping of unfilled seats of one year with the permitted seats of the subsequent year. It was also highlighted that a medical seat has life only in the year it falls that to only till the cut-off date fixed by this Court i.e. 30th September in the respective year and carry forward principle is unknown to the professional courses like medical, engineering, dental etc. It was also stated that there is no power with the Board to carry forward a vacancy to a succeeding year and that if the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admissions in the succeeding years. The principles laid down in the said decisions have to be, therefore, understood in the abovesaid manner and those principles can be applied to the facts of this case while examining the correctness of the impugned judgment of the Division Bench.

Reliance was placed by the learned counsel for the Appellant upon the decision reported in Madhu Singh (supra) apparently to draw our attention to the effect that even if the course adopted by the High Court while directing admission to the unfilled seats after the last scheduled date for admission, this Court directed that such admission granted to a candidate will not be affected even if this Court were to set at naught the direction given by the High Court. We do not find any ratio or principle to be followed based on the said fact noted in paragraph 8 of the judgment, but in paragraph 23 this Court made it clear that a necessity for specifically providing for a time schedule for the course and fixing the period during which admissions can take place in order to ensure that no admission can be granted after the scheduled date, essentially should be the date for commencement of the course. By stating the said principle in no uncertain terms, this Court has reiterated the position that there should be strict adherence to the schedule of dates relating to admission and there

cannot be any deviation in adhering to the said schedule.

Mr. Guru Krishna Kumar, learned Senior Counsel appearing for the contesting Respondent submitted that the direction issued by the Division Bench to admit the contesting respondent in the academic session 2014-15, does not in any way violate the principles laid down in the decision reported in Aneesh D. Lawande (supra) wherein, in paragraph 30 this Court has laid down the principles to the effect that there cannot be direction for increase of seats or telescoping of unfilled seats of one year with the permitted seats of the subsequent years. According to the learned Senior Counsel, by implementing the directions of the Division Bench, there is not going to be an increase of the seats for the academic session 2013-14 and since the admission of the Respondent would be based on her merits in the academic session 2014-15, the same will not amount to telescoping of unfilled seats of the previous year. We will examine the correctness of the said submission while dealing with the respective submissions of the learned Senior Counsel.

The learned Senior Counsel also submitted that the decision reported in Rajiv Kapoor (supra) is distinguishable since in that case this Court was concerned with the candidates of the year 1997 whose admissions were directed to be made in the academic session 2000. The learned Senior Counsel, therefore, contended that having regard to the enormous time gap between 1997 and 2000, the principles stated therein, cannot be applied to the case of the contesting Respondent. The learned Senior Counsel would, therefore, contend that as we are concerned with the case of the contesting Respondent whose admission related to the immediate preceding year, namely, 2013-14 and whose legitimate rights were unlawfully denied in that year, the direction for her admission in the immediate next academic session 2014- 15 and that to based on her merits following the decision of this Court in Asha (supra) was well justified.

The learned Senior Counsel, therefore, contended that the said decision though rendered by three Judge Bench of this Court would not in any way dilute the decision in Asha (supra) on the principles of per incuriam where the facts of the three Judge Bench decision are clearly distinguishable.

While strongly relying upon the decision reported in Asha (supra), the learned Senior Counsel after referring to the question framed in paragraph 4(c) wherein this Court posed the question as to what relief the Courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in the matter of admission in terms of rules and regulations, drew our attention to paragraphs 25 and 32. In paragraph 25, this Court has held as under:

“25. Strict adherence to the time schedule has again been a matter of controversy before the courts. The courts have consistently taken the view that the schedule is sacrosanct like the rule of merit and all the stakeholders including the authorities concerned should adhere to it and should in no circumstances permit its violation. This, in our opinion, gives rise to dual problem. Firstly, it jeopardizes the interest and

future of the students. Secondly, which is more serious, is that such action would be ex facie in violation of the orders of the court, and therefore, would invite wrath of the courts under the provisions of the Contempt of Courts Act, 1971. In this regard, we may appropriately refer to the judgments of this Court in Priya Gupta, State of Bihar v. Sanjay Kumar Sinho, Medical Council of India v. Madhu Singh, GSF Medical and Paramedical Assn. v. Assn. of Self Financing Technical Institutes and Christian Medical College v. State of Punjab." In paragraph 32, the exceptional circumstances which can be examined have been quoted in order to ensure that when any deviation is to be made from the normal rule, such similar principles should be kept in mind by the Courts. In paragraph 32, it was highlighted that in the rarest of rare case or exceptional circumstances, the Courts may have to mould the reliefs and make an exception to the cut-off date of 30th September but in those cases the Court must first return a finding that no fault was attributable to the candidate, that the candidate pursued her rights and legal remedies expeditiously without any delay and that there was no fault on the part of the authorities and that there was no apparent breach of the rules, regulations and principles in the process of the selection and grant of admission. It was also highlighted that where denial of admission would violate the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. By relying upon the said part of the decision, the learned Senior Counsel submitted that the case of the contesting Respondent was squarely covered by the principle of an exceptional case and, therefore, the direction of the Division Bench was well justified. The learned Senior Counsel also relied upon the decisions in Dwarkanath (supra) and Salil Sabhlok (supra) on the principle of moulding of the relief to be made. Reliance was placed upon the decisions in Miss Neelima Shangla (supra) and Haryana Urban Development Authority (supra) to support the stand that a candidate who approached the Court diligently deserved different treatment.

Having noted the various decisions relied upon by the Appellant in SLP (C) No.18099 of 2014 and the contesting Respondent, we are able to discern the following principles:

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.

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.

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.

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

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.

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 non dormientibus aequitas subvenit, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

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.

There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward 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 next academic year.

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.

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.

Having culled out the above broad principles from the various decisions of this Court and before examining the correctness of the judgments impugned in these appeals, it is necessary to note down certain vital facts relating to the case of the contesting Respondent in order to find out whether there was any scope at all for granting the

> relief as has been done by the Division Bench by the impugned orders. Admittedly, the contesting Respondent was not eligible under the first category of the NRI quota prescribed under paragraph 2 of the prospectus for academic session of 2013-
>
> 14. She was, however, eligible under the second category of NRI quota. At this juncture, it must be stated that under the second category though her name was first in the list, as the eligible candidates in the first category got selected for all the seats under NRI quota, she did not get the opportunity. The prospectus was issued by the Chandigarh Administration and the Government Medical College as early as in the month of April, 2013.

The contesting Respondent filed the application before the last date, namely, 24.06.2013 claiming admission under the first category or in the alternate, in the second category. The Chandigarh Administration, by letter dated 02.07.2013, informed the contesting Respondent that unless she enclosed a certificate issued by the DC-cum-Estate Officer or Municipal Corporation of Chandigarh about the fulfillment of the condition relating to ownership of immovable property, her application cannot be considered under the first category of NRI quota. The writ petition was filed by her on 05.07.2013. A list of eligible candidates was finalized on 12.07.2013. The first counselling was scheduled on 19.07.2013 insofar as NRI candidates were concerned. There was an interim order of the High Court passed on 29.07.2013 directing the administration to receive the contesting Respondent's application under the first category of NRI quota, making it clear that at a later point of time, she cannot claim any equity on that basis. Subsequently, by another order dated 08.08.2013, the High Court directed the administration to permit her to participate in the second counselling. The writ petition was ultimately disposed of by the learned Single Judge on 27.09.2013. As was noted earlier, the learned Single Judge while upholding the challenge made by the contesting Respondent as to the validity of the condition imposed in order to be eligible to fall under the first category of NRI quota, declined to grant any relief to the contesting Respondent holding that she failed to challenge the eligibility criteria before submitting her application for M.B.B.S. course after taking note of the fact that she secured admission in the Dental course.

After the learned Single Judge delivered the judgment on 27.09.2013, the contesting Respondent filed the Letters Patent Appeal on 15.11.2013 and after rectification of certain defects it was re-filed on 06.12.2013. The Letters Patent Appeal was heard by the Division Bench and was disposed of by order dated 13.01.2014. As the direction issued by the Division Bench for creation of an additional seat could not be complied with by the Chandigarh Administration and the Government Medical College on the ground that the MCI declined to grant permission for creation of an additional seat, at the instance of Chandigarh Administration, the review came to be filed in which the present impugned order came to be passed by the Division Bench on 21.02.2014.

When we analyze the above sequence of events, we find that the contesting Respondent knew full well when the prospectus was issued in April 2013 that she did not fulfill the criteria for making an application under the first category of NRI quota as prescribed in paragraph 2 of the prospectus. But yet there was no immediate challenge to the said provision before the High Court. Knowing full well that she was ineligible under the said category after waiting almost till the last date for filing the

application, namely, 24.06.2013, she filed the application on 21.06.2013 claiming admission under the first category and thereafter, waited till the Chandigarh Administration called upon her to fulfill the criteria of submitting a certificate for proof of ownership of immovable property by the DC-cum-Estate Officer, which she could not have produced even as on April, 2013. Therefore, the contesting Respondent cannot be heard to say that the filing of the writ petition on 05.07.2013, challenging the validity of the prescription contained in paragraph 2 of the prospectus relating to the first category of NRI quota was made diligently or atleast within a reasonable time. When we test the said conduct of the contesting Respondent in not having approached the Court at the appropriate time in challenging the said provision, it will have to be stated that the Chandigarh Administration and the Government Medical College having received the applications for admissions for different categories including the category under the NRI quota was processing the applications segregating the different categories and by the time the writ petition filed on 05.07.2013, the process of finalizing the eligible candidates was also nearing completion and by 12.07.2013 the same was also concluded. If the said factor is noted, it should be stated that the conduct of the contesting Respondent in having fixed her own time limit for approaching the Court, in particular, with reference to the challenge to the eligibility criteria with which she had every grievance right from the very first date when the prospectus was issued in April, 2013, it will have to be stated that there was total lack of diligence on the part of the contesting Respondent in her decision to work out her remedies in the Court of law.

Keeping the said factor in mind, when we examine the subsequent development that had taken place, it is true that the relevant criteria prescribed for claiming admission under the first category of NRI quota was held to be wholly unreasonable and on that ground the learned Single Judge struck out the said clause. Thereafter, since the learned Single Judge found that there was total lack of diligence displayed on the part of the contesting Respondent, he expressed his inability to grant the relief to the contesting Respondent. After the said decision was rendered by the learned Single Judge on 27.09.2013, when we analyze the subsequent conduct of the contesting Respondent, we find that she applied for the copy of the judgment of the learned Single Judge on 19.10.2013 and the Letters Patent Appeal came to be filed only on 15.11.2013. The Letters Patent Appeal was defective and it was re-filed only on 06.12.2013. Ultimately, the appeal came before the Division Bench on 13.01.2014, when the Division Bench took the view that the learned Single Judge ought to have moulded the relief and on that footing directed that the Chandigarh Administration to create a seat for admitting the contesting Respondent to the M.B.B.S. course. Thereafter, by the impugned order dated 21.02.2014, the Division Bench held that when creation of the seat was impossible of compliance as the MCI was not inclined to grant permission, issued a direction that the contesting Respondent should be admitted in the academic year 2014-15 in the NRI quota meant for admission.

When we note the above dates, it will have to be stated that the compliance of the direction of the Division Bench would certainly cause serious prejudice to the Appellant in SLP(C) No.18099 of 2014, as the said Appellant is stated to have been ranked in the sixth place, i.e. in the sixth vacancy meant for NRI category candidates for admission for the academic year 2014-15. It is common ground that the contesting Respondent was not an applicant for the year 2014-15 under the NRI category. If we consider the claim of the contesting Respondent as to whether her claim can be

brought under the category of exceptional case, the various factors noted above, namely, failure to challenge the relevant provision immediately after the issuance of the prospectus in the April, 2013 would loom large before the Court. There was no justifiable reason stated on behalf of the contesting Respondent as to why the challenge was not made promptly knowing full well that the said provision disentitled her to claim under the said category. It is needless to state that if the challenge had been made diligently and immediately after the issuance of the prospectus in April, 2013 itself, it would have enabled the Court to examine the said challenge at the earliest point of time and in the event of finding good grounds to accept the challenge, there would have been no difficulty for the Court to issue appropriate directions not only for accepting the application of the contesting Respondent under the first category of NRI quota, but in the event of her scoring the requisite marks on merits, the grant of admission could have been worked out without infringing the rights of any other candidate under the said category. It is relevant to note that the invalidity of the relevant clause as declared by the learned Single Judge, which has become final and conclusive, would have benefitted all other candidates who are similarly placed like that of the contesting Respondent, had it been challenged at the earliest point of time, as that would have provided adequate scope for considering the relative merits of all those candidates who are similarly placed like that of the contesting Respondent.

The time gap between April, 2013 and July, 2013 nearly three months is certainly a long period as the process of admission to professional courses are regulated by the Selection Authorities such as the Medical Council of India, All India Council for Technical Education, National Council for Teacher Education, State Government Authorities as well as the concerned affiliated universities each one of whom have got to play their corresponding roles in regulating the admissions and also monitoring the subsequent course of study for the purpose of ultimately granting the degrees of successful candidates after the completion of the course. As the process being a continuous one, any delay in working out the remedies promptly will have to be viewed very seriously or otherwise the same would impinge upon the rights of other candidates apart from causing unnecessary administrative hardship to the regulatory bodies. When the said factors are kept in mind while analyzing the case on hand, it will have to be stated that even though the contesting Respondent was successful in her challenge to the concerned provision relating to the NRI quota in the prospectus of 2013-14, on that sole ground it cannot be held that every other factor should be kept aside and her claim for admission to M.B.B.S. course should be ensured by issuing directions unmindful of the infringement of rights of other candidates and the other statutory bodies. We are, therefore, of the view that the conduct of the contesting Respondent 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 January, 2014 by which time the substantial part of the academic year had been crossed, the question remained as to whether the Division Bench was justified in directing the admission of the contesting Respondent to the M.B.B.S. course in the academic year 2014-15 by merely stating that she was already undergoing the B.D.S. course and that the course content of the first six months of B.D.S and M.B.B.S. are more or less identical. Beyond that we do not find any other good grounds which weighed with the Division Bench in issuing the direction for creating an additional seat.

The Division Bench did rely upon the decision of this Court in Asha (supra) and Priya Gupta (supra). Subsequently, when it came to light that the direction for admission by creation of an additional seat was impossible of compliance, the impugned order came to be issued by the Division Bench on 21.02.2014 by which time half of the academic year had almost come to an end. In our considered view, at least at that stage since the process of issuance of the prospectus for 2014-15 was on the anvil, the contesting Respondent ought to have been allowed to work out and claim under the NRI quota in the said academic year. Since by the order of learned Single Judge the restriction in claiming admission under the first category of NRI quota having been removed, there would have been no impediment for the contesting Respondent to apply under the said category and staked her claim along with the other competing candidates. It was unfortunate that the case of the contesting Respondent was considered to be rarest of rare case, which in our considered opinion, does not have the required support. As was noted by us earlier, the contesting Respondent did not display due diligence in making a challenge to the relevant clause relating to first category of NRI quota of the 2013-14 prospectus. Further, as she had already secured a seat in the Dental course and the creation of an additional seat was consistently not encouraged by this Court, the direction for creation of an additional seat in the month of January, 2014 for the academic year 2014-15 by the Division Bench could not be implemented. Therefore, the ultimate direction of the Division Bench in having directed the Chandigarh Administration and the Government Medical College to provide admission to the contesting Respondent without her participation in the admission process of the year 2014-15 and thereby causing prejudice to the rightful claims of the candidates who validly made their applications in the said academic year cannot be countenanced as that would amount to setting up a bad precedent in all future cases.

As time and again such instances of claiming admission into such professional courses are brought before the Court, and on every such occasion, reliance is placed upon the various decisions of this Court for issuing necessary directions for accommodating the students to various courses claiming parity, we feel it appropriate to state that unless such claims of exceptional nature are brought before the Court within the time schedule fixed by this Court, Court or Board should not pass orders for granting admission into any particular course out of time. In this context, it will have to be stated that in whatever earlier decisions of this Court such out of time admissions were granted, the same cannot be quoted as a precedent in any other case, as such directions were issued after due consideration of the peculiar facts involved in those cases. No two cases can be held to be similar in all respects. Therefore, in such of those cases where the Court or Board is not in a position to grant the relief within the time schedule due to the fault attributable to the candidate concerned, like the case on hand, there should be no hesitation to deny the relief as was done by the learned Single Judge. If for any reason, such grant of relief is not possible within the time schedule, due to reasons attributable to other parties, and such reasons are found to be deliberate or mala fide the Court should only consider any other relief other than direction for admission, such as compensation, etc. In such situations, the Court should ensure that those who were at fault are appropriately proceeded against and punished in order to ensure that such deliberate or malicious acts do not recur.

We are, therefore, convinced that the impugned orders of the Division Bench in having issued such a direction cannot be approved by this Court. When we apply the various principles which we have culled out to the case on hand, we find that each one of the principle has been violated by the

contesting Respondent. As stated by us earlier, there was total lack of diligence displayed by the contesting Respondent right from the stage when the submission of the application was made. We have noted that the prospectus which was issued in April, 2013 and the offending clause in the prospectus was not challenged promptly while knowing full well that under the said clause the candidate was not eligible, but yet for reason best known to her, an application was filed and that to three days prior to the last date notified for submission of such application. There was no reason, much less justifiable reason, for not challenging the relevant clause before the filing of the application. There was no reason for the contesting Respondent to wait for any reply from the Chandigarh Administration. After the order of the learned Single Judge also, the contesting Respondent took her own time to approach the Division Bench for preferring the Letters Patent Appeal. A cumulative effect of the conduct of the contesting Respondent has only resulted in disentitling her to claim any equitable relief prejudicial to the interest of other eligible candidates of the year 2014-15 and whose rights came to be crystallized based on the process of selection made for the academic year 2014-15. If the direction of the Division Bench in the above stated background is allowed to operate, it would amount to paying a premium for the contesting Respondent's inexplicable delay in working out her remedies.

We are, therefore, convinced that such a recalcitrant attitude displayed by the contesting Respondent should not be encouraged at the cost of the rights of the other candidates for the year 2014-15 against whom the contesting Respondent had no axe to grind. Therefore, while setting aside the orders impugned in these appeals, we issue the following directions:

> Since the contesting Respondent pursued her B.D.S. course till this date though she has secured her admission pursuant to the direction of the Division Bench to M.B.B.S. course in the year 2014-15 and as we have found no justification for the direction issued by the Division Bench which we are setting aside, we direct the Chandigarh Administration and the Government Medical College to restore the contesting Respondent's admission to the B.D.S. course of the academic year 2013-14 and allow her to pursue the said course, if she so chooses.
>
> The admission granted to the contesting Respondent in the M.B.B.S. course of 2014-15 under the NRI category stands cancelled and the selection of candidates who applied for the said course in the said category in the academic year 2014-15 shall be finalized by the Chandigarh Administration and the Government Medical College and on that basis proceed with the admission as per the schedule.
>
> As far as the claim relating to the impleaded Respondent in I.A. No.2-3 of 2014 is concerned, since his claim is subject matter of consideration before the High Court, the same would be subject to the outcome of those proceedings which is left open for consideration by the High Court.
>
> The interim direction issued by this Court on 11.07.2014 is vacated and the seats left vacant in B.D.S. and M.B.B.S. courses shall be filled up on merits.

With the above directions, the appeals filed by Chandigarh Administration and the Government Medical College as well as by Jessica Rehsi stand allowed.

…….J. [Fakkir Mohamed Ibrahim Kalifulla]
.....J. [Shiva Kirti Singh] New Delhi;

September 01, 2014.

---

45 of 45