



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 273/2021
in

S.B. Civil Writ Petition No.245/2021

Dr. Rafique Khan Son Of Ayub Khan, Aged About 32 Years,
Address C-102, Sanjay Nagar, Bhatta Basti, Shastri Nagar, Jaipur
(Rajasthan) - 302016.

-----Appellant

Versus

National Institute Of Ayurveda, Deemed To Be University (De-
Novo) Through Its Director, Jorawar Singh Gate, Amer Road,
Jaipur (Rajasthan) - 302002.

-----Respondent

For Appellant(s) : Mr. Tribhuvan Narayan Singh
For Respondent(s) : Mr. Anurag Agarwal

**HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJEET PUROHIT**

Order

04/08/2025

1. The challenge by the appellant before us is to the order passed by learned Single Judge, whereby while deciding several writ petitions, the learned Single Judge has failed to notice the fact that the appellant was higher meritorious than the other institutional candidates and has failed to give its findings related to the submissions raised by the learned counsel. While learned Single Judge has noted the submissions with regard to the disparity amongst the similarly placed students who had passed out from the same college, but failed to give a finding regarding the disparity & distinction amongst the similarly situated persons. While fresh students were treated as such, the present appellant was not treated afresh.



2. Learned counsel for the appellant submits that the learned Single Judge could not have carved out a category of fresh students and those who had passed out earlier from the same college. Learned counsel further submits that the appellant has got higher merit than those candidates, who were given institutional preference and had passed out after the appellant from the same college and he has been deprived of his rightful claim for admission.

3. Per contra, learned counsel for the respondent-Institute submits that by the efflux of time, the present special appeal writ has been rendered infructuous as the admissions have already been over and the course has also been concluded for the year 2020-21.

4. However, learned counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **S. Krishna Sradha v. The State of Andhra Pradesh & Ors.** decided on **13.12.2019**, and submits that the appellant, who has been wrongly deprived of admission, is to be either allowed to join in the next course or to be granted compensation.

5. We have considered the submissions made by learned counsel for both the parties.

6. In **S. Krishna Sradha (supra)**, the Apex Court has held as under:-

"9. In light of the discussion/observations made herein above, 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:



(i) That in a case where candidate/student has Reason: 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.

(ii) 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 – 30th 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 30th 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.

(iii) 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.

(iv) 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.

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

7. As regards the institutional preferences, the word was initially called and given recognition by a Constitutional Bench of the Hon'ble Supreme Court in the case of **Saurabh Chaudri & Ors. v. Union of India & Ors. [(2013) 11 SCC 146]**, the Apex Court has held as under:-

"70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr Pradeep Jain. The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India."

8. It appears that in **Dr. Simple Gupta v. State of Rajasthan & Anr. [S.B. Civil Writ Petition No.5227/2020]** decided on 10.09.2020, this Court took a view which has been noticed by the learned Single Judge also as under –

"34. This Court further holds that 50% of seats which are meant to be filled from non-service candidates cannot be filled on the basis of qualification acquired by the candidates only from the State of Rajasthan and the respondent-State is required to consider the merit of such candidates who want to apply for the said course.

35. This Court further holds that the State is always free to prescribe any other reasonable condition like other States have prescribed condition of domicile/resident of a particular State, however, 100% institution-wise reservation is not permissible in the eye of law.



36. This Court further finds that the State is always free to prescribe institution-wise reservation but the same should not exceed the limit of 50% as has been approved by the Apex Court in the case of Saurabh Chaudri (supra).

37. Accordingly, the present writ petition filed by the petitioner is allowed. The eligibility condition of having passed MBBS Degree from the College situated in the State of Rajasthan is declared illegal and the same is set aside. The respondents are further permitted to make appropriate provision of providing institution-wise reservation to the extent of 50% and the remaining 50% seats, from the non-service category candidate, should be filled from the candidates who have applied for the same and who stand higher in merit, as per the criteria evolved by the State by taking into account the marks secured in NEET PG Examination, 2020."

9. While, we affirm that each institute at the stage of admissions at graduate level or at the post-graduate level, can have certain amount of institutional preference, however, certain institutional preferences has to be applied to all the students who have passed out from that institution and there cannot be an artificial distinction amongst the students who had passed out from the said institution where the admissions are being given. If a distinction is drawn between the students, who had passed in a particular year and a subsequent year, it would amount to create an artificial class. Moreover, it may also create a chaotic situation where a candidate who has not passed examination in a particular year and in the subsequent year, and in the second attempt, he passes and clears the examination. Such a candidate, who may have failed in the previous year, may become eligible for institutional preference merely because he was passed out in the subsequent year, the purpose of institutional preference would thus fail. What is important is that the candidates who are considered in the institutional preferences quota, should be those



who are meritorious and *inter se* merit has to be, therefore, looked into for the purpose of achieving the aim.

10. Therefore, principally we do not agree with the judgment passed by learned Single Judge, wherein he has upheld the institutional preference only to the fresh candidates and not to the earlier students who had been passed from the same college. However, in view of the legal proposition as we have propounded herein above, we find that we are unable to grant any relief to the appellant at this stage. Time in disposal of such cases takes its own toll. We have sympathies with all the students, but since the case could not be taken up within the time frame during when the admission process was going on, in that particular year, we cannot turn back the clock and grant the appellant admission in the course.

11. So far as the subsequent year admissions are concerned, of course, the appellant must have applied and must have participated, and if there were more higher meritorious candidates then they would have already taken into consideration. The appellant, therefore, cannot claim for the admission to the subsequent year and take away right of a more meritorious candidates in that year.

12. As regards granting of compensation is concerned, it is noticed that the course is for admission to P.G. and is not a case relating to appointment. A claim of compensation in relation to the admission, has to be differently understood than those for appointments.



13. While we have due regards to the judgment passed by the Hon'ble Apex Court, we find that the observation regarding grant of compensation as an additional remedy, has been only noticed but not as a substitute for restitutorial remedies. We, therefore, do not deem it appropriate to grant any compensation to the appellant.

14. We also additionally noticed that the judgment in **S. Krishna Sradha (supra)** limits itself only to admissions in MBBS course and to PG course. We leave it, therefore, at this stage and dispose of the present special appeal writ with the aforesaid observations while setting aside the judgment passed by learned Single Judge.

15. No order as to costs.

(SANJEET PUROHIT),J

(SANJEEV PRAKASH SHARMA),J

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