



**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE FIFTH DAY OF JULY  
TWO THOUSAND AND TWENTY TWO

**PRESENT**

**HONOURABLE THE CHIEF JUSTICE PRASHANT KUMAR MISHRA**  
**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**WRIT PETITION NO: 6521 OF 2022**

**Between:**

1. KUCHIBHOTLA SRIVATSA S/o Kuchibhotla Ravi Sankar,  
Aged about 29 Years, Occ. Doctor,  
R/o D.No.24A-23-10, S4,  
Vijaya Towers, Ashok Nagar,  
Pathebada, Eluru, Venkata Rao Peta,  
West Godavari, Andhra Pradesh, 534002.

**...PETITIONER(S)**

**AND:**

1. State of Andhra Pradesh Represented by its Principal Secretary to  
Government, Health, Medical and Family Welfare Department,  
Secretariat, Velagapudi, Amaravati, Guntur District.
2. All India Institute of Medical Sciences, New Delhi,  
Examination Section,  
Sri Aurobindo Marg, Ansari Nagar, Ansari Nagar East,  
New Delhi, Delhi, 110029,  
Rep by its Registrar.
3. Post Graduate Institute of Medical Education and Research ,  
Chandigarh, Madhya 'Marg, Sector 12, Chandigarh, 160012, Rep by its  
Registrar.

**...RESPONDENTS**

**Counsel for the Petitioner(s): N ASHWANI KUMAR**

**Counsel for the Respondents: GP FOR MEDICAL HEALTH FW(AP)**

**The Court made the following: ORDER**



**HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

**HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE**

**&**

**HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

**WRIT PETITION No.6521 OF 2022**

*(Through physical mode)*

Kuchibhotla Srivatsa,  
S/o Kuchibhotla Ravi Sankar,  
R/o D.No.24A-23-10, S4,  
Vijaya Towers, Ashok Nagar,  
Pathebada, Eluru, Venkata Rao Peta,  
West Godavari, Andhra Pradesh, 534002.

... Petitioner

Versus

The State of Andhra Pradesh,  
Rep., by its Principal Secretary to Government,  
Health, Medical & Family Welfare Department,  
Secretariat, Velagapudi,  
Amaravathi and two others.

... Respondents

Counsel for the petitioner : N.Ashwani Kumar

Counsel for the respondents : N.Harinath (Assistant Solicitor General)

**JUDGMENT**

**Date: 05.07.2022**

*(per D.V.S.S.Somayajulu, J)*

This writ petition is filed for the following reliefs:

“..to issue an appropriate Writ or order or direction more particularly in the nature of Writ of Mandamus or any other appropriate writ order or direction, **A.** To declare the Revised Notice vide F.AIIMS/E. S./4-12/(INI-SS-JAN-2022/2021) dated 09.02.2021 issued by the 2<sup>nd</sup> respondent, thereby prohibiting the allotment of sponsored/reserved seats to general candidates in the event of a vacancy as being illegal, arbitrary, unjust, violative of Articles 14, 19(1)(g), 21 and 47 of the Constitution of India, contrary to the Order dated 25.01.2022 passed by this Hon'ble Court and the principles established by the Hon'ble Supreme Court in Index Medical College Hospital and Research Centre v. State of Madhya Pradesh reported in (2021) SCC Online SC 318, and **B.** To declare the Proceedings vide F.No.AIIMS/Exam. Sec./4-12/(INI-SS-JAN-22/2022) dated 17.02.2022 issued by



the 2nd Respondent and Proceedings vide DM/M.Ch/1TRG/2022/451 dated 25.02.2022 issued by the 3rd Respondent, thereby rejecting the request of the petitioner for De-reserving one sponsored seat in the course of DM Pediatrics Critical Care at PG Institute of Chandigarh i.e., the 3<sup>rd</sup> respondent herein as being illegal, arbitrary, unjust, violative of Articles 14, 19(1)(g), 21 and 47 of the Constitution of India, contrary to the Order dated 25.01.2022 passed by this Hon'ble Court and the principles established by the Honble Supreme Court in Index Medical College, Hospital and Research Centre v. State of Madhya Pradesh reported in (2021) SCC Online SC 318 and **C**. Consequently, set aside the Revised Notice (Proceedings) issued by the 2<sup>nd</sup> respondent vide F.AIIMS/E.S./4-12/(INI-SS-JAN-2022/2021) dated 09.02.2021 and **D**. Further Consequently, Set-aside the Proceedings vide F.No.AIIMS/Exam. Sec./4-12/INI-SS-JAN-2022/2022 dated 17.02.2022 issued by the 2<sup>nd</sup> Respondent and Proceedings vide DM/M.Ch/1TRG/2022/451 dated 25.02.2022 issued by the 3<sup>rd</sup> Respondent and **E**. Consequently direct the Respondents more particularly 2<sup>nd</sup> & 3<sup>rd</sup> respondent to allot/admit the Petitioner in the course of DM Pediatrics Critical Care while converting the vacant reserved into General category seat (without stipend) and **F**. Pass such other order....”

This Court has heard Sri Y.V.Ravi Prasad, learned senior counsel for Sri N.Ashwani Kumar, learned counsel for the petitioner and Sri N.Harinath, learned Assistant Solicitor General appearing for the respondents.

The learned senior counsel appearing for the petitioner submits that the facts are not really in dispute. He points out that the petitioner appeared for an entrance exam called the Institute of National Importance Super Speciality Entrance Test (INI-SS) seeking admission in DM Pediatrics Critical Care course. The test was conducted by the 2<sup>nd</sup> respondent AIIMS. The test was held on 07.12.2021, the results were declared on 31.12.2021 and the courses were to commence from 01.01.2022. The petitioner secured fourth rank in the exam held on 07.12.2021.



The issue as per the learned counsel is about the non-conversion of a sponsored seat into a general seat. Learned senior counsel submits that in the 2<sup>nd</sup> respondent-institution (PGIMER, Chandigarh) there are 2 seats which are called 'sponsored seats'. No candidate was qualified for allotment of the seat. The petitioner who is otherwise a brilliant student, therefore, sought admission in this 'vacant' sponsored seat. As the respondents did not grant the seat, he filed W.P.No.370 of 2022, which was allowed on 25.01.2022 by a Division Bench of this Court. The Court permitted the petitioner to make a representation for the seat.

Sequentially, learned senior counsel submits that challenging the order of the Division Bench, respondent No.3 filed SLP.No.6040 of 2022 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India did not interfere in the order passed, but it left open all the questions of law to be agitated including the issues about the (a) cut-off date (b) jurisdiction of the A.P. High Court etc. The High Court was also directed to dispose of the writ petition. The petitioner made a representation seeking a seat but the same was rejected by respondent Nos.2 and 3. Accordingly, the present writ petition is filed as a revised notification was issued on 09.02.2022, wherein the allotment of sponsored seats for general seats was prohibited and also seeking to set aside the rejection of the petitioner's request/representation by 2<sup>nd</sup> respondent vide their proceeding dated 17.02.2022 and also by respondent No.3 on 25.02.2022. The prayer is to set aside these two rejection orders and to allot one seat in the pending vacant sponsored seats which were



not filled up. The petitioner, as per the learned senior counsel, is willing to pursue this course without any stipend.

Coming to the issue of the jurisdiction, the learned senior counsel argues that the issue of jurisdiction was already decided in the earlier W.P.No.370 of 2020 by this Court and that the subsequent objection of the respondents cannot be entertained as it is hit by the principles of *res judicata*.

Alternatively, he submits that the two impugned letters dated 17.02.2022 (issued by respondent No.2) and 25.02.2022 (issued by respondent No.3) were both sent to the petitioner's address at Venkat Rao Peta at Eluru, West Godavari District, Andhra Pradesh. Therefore, he contends that a part of cause of action has occurred in the State of Andhra Pradesh and therefore, the high Court of Andhra Pradesh has the territorial jurisdiction to entertain the writ petition. Relying upon the judgement of ***Nawal Kishore Sharma v. Union of India***<sup>1</sup> and in particular paras 16 and 17, learned senior counsel argues that as a part of or a fraction of cause of action arose within the State of Andhra Pradesh, this Court has the territorial jurisdiction to entertain the matter and to decide the same.

With regard to the cut-off date i.e. 28.02.2022, the issue which was also left open by the Hon'ble Supreme Court of India, learned senior counsel argues that the cut-off date is a mere technicality; that no rule or right of the respondents 2 and 3 will be violated, if the petitioner joins after the cut-off date. He also submits that no fault is attributable to the petitioner and he has been diligently pursuing

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<sup>1</sup>2014 (9) SCC 329



his rights and that relief cannot be denied to him. Merely relying on the cut-off date to deny admission to a meritorious student would result in ruining his professional career. He relies upon the judgment of Hon'ble Supreme Court of India in **Asha v. PT. B.D.Sharma University of Health Sciences and others**<sup>2</sup>. With regard to the change in the classification or what the learned counsel calls de-reservation and conversion, he submits that even though the seat was reserved for a sponsored candidate, the same is admittedly not filled up and no qualified candidate is there for the said seat. He argues that leaving behind a vacant or un-filled seat in a prestigious institution would be a national waste of resources and that interest of the public are not sub-served if such seats can be kept vacant. He relies upon **Index Medical College, Hospital & Research Centre v. State of Madhya Pradesh and others**<sup>3</sup> and other judgments. In particular he relies on **Dr. Sadhna Devi and others v. State of U.P. and others**<sup>4</sup> and **Dr. Preeti Srivastava and another v. State of Madhya Pradesh and others**<sup>5</sup> in support of his contentions. He relies upon the judgment of the Punjab and Haryana High Court reported in **Miss Sumedha Kalia and other v. State of Haryana and others**<sup>6</sup> and prays for similar directions to be issued in line with the decision of the Punjab and Haryana High Court which directed the seat to be filled up forthwith.

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<sup>2</sup> (2012) 7 SCC 389

<sup>3</sup> 2021 SSC Online SSC 318

<sup>4</sup> (1997) 3 SCC 90

<sup>5</sup> (1999) 7 SCC 120

<sup>6</sup> AIR 1990 P.H. 239



The learned senior counsel also points out that both on merits and on law, the petitioner who is eminently qualified is entitled to a seat in the course of his choice and that leaving such a seat vacant would result in a national loss. He points out that the petitioner does not even want stipend for the period of the course and that he would pursue the course even without a stipend being paid.

In reply to this, learned Assistant Solicitor General argues that this Court has no territorial jurisdiction to entertain the matter. Relying upon the information brochure/prospectus, which is published by the 2<sup>nd</sup> respondent, the learned Assistant Solicitor General submits that as per the clause in this brochure, which is binding on all the candidates, any dispute arising out of these issues shall be subject to the jurisdiction of the Delhi Courts alone. Relying upon the leading judgment of the Hon'ble Supreme Court of India in ***A.B.C. Laminart Pvt. Ltd. and Ors. vs. A.P. Agencies, Salem***<sup>7</sup>, the learned Assistant Solicitor General argues that the use of the clear words like 'alone' etc., in the brochure/prospectus, (which is accepted by the petitioner) makes it very clear that it is only the Delhi Courts that have jurisdiction over the issues arising out of this litigation. He also submits that no fundamental right of the petitioner was infringed within the State of Andhra Pradesh for this Court to have jurisdiction.

With regard to the cut-off date, learned Assistant Solicitor General argues vehemently that it is a 'sacrosanct' date and it cannot be relaxed by the Court. According to him, this was the reason why

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<sup>7</sup>(1989) 2 SCC 163



the Hon'ble Supreme Court in the SLP left this issue open to be decided. He points out that midstream admissions are frowned upon by the Hon'ble Supreme Court of India in more than one decision. He relies upon the decision of the **Medical Council of India v. Madhu singh and others**<sup>8</sup>, **Asha's** case (2 supra), **Chandigarh Administration and another v. Jasmine Kaur and others**<sup>9</sup> and finally on the judgment of Hon'ble Supreme Court in **S.Krishna Sradha v. State of Andhra Pradesh and others**<sup>10</sup>. It is the contention of the learned Assistant Solicitor General that this judgment makes it very clear that the time schedule or the last date fixed is sacrosanct and that the same cannot be relaxed and that midstream admissions are not permissible. He also points out that the second round of counselling through another notification has already been issued which is also challenged in this writ petition and that the seat may not actually remain vacant as predicted and that the process is set in place for the July 2022 session. He points out that this is an admitted fact as can be seen from the writ petition and also from the note of propositions (3.6) filed by the petitioner. Therefore, he submits that as the cut-off date expired on 28.02.2022, no order can be passed in favour of the petitioner.

With regard to the de-reservation for allotment of a seat, learned Assistant Solicitor General draws the attention of the Court to the portions of the prospectus and also to the counter affidavit

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<sup>8</sup> (2002) 7 SCC 258

<sup>9</sup> (2014) 10 SCC 521

<sup>10</sup> (2020) 17 SCC 465





filed. According to him, a sponsored seat is not a 'reserved seat' like those meant for OBC/SC/ST. There is no budgetary sanction for salary for these seats. Each seat has some basic eligibility criteria and that the petitioner does not fulfil even one of the points in the eligibility criteria.

Learned counsel points out that the sponsored seat which is being sought for by the petitioner is in the 3<sup>rd</sup> respondent PG Institute, Chandigarh. Relying on the prospectus issued by this Institute, learned Assistant Solicitor General points out that such a candidate applying for this should be (a) a permanent employee of the institution, which is sponsoring him and he or she should be continuously working for three years; (b) after getting training at PGIMER, Chandigarh, the candidate should work at least 5 years at the sponsoring institution and that all the payments due as emoluments/stipend should be paid by the sponsoring institutions. The sponsoring institution can only be a Central or State Government institution or an Autonomous Body, Public Sector College etc. He points out that these special category of seats are created to impart training to in-service doctors to improve their skills. Therefore, he submits that as the candidate in this case does not fulfil any of the said criteria, he cannot be considered for the seat. Hence, learned Assistant Solicitor General submits that both on merits and as per law, the petitioner is not entitled to any relief.

**COURT:**



Learned counsels appearing for the petitioner and the respondents have also filed brief notes of their legal and factual submissions which were also taken into account by this Court.

**(a)Jurisdiction of the A.P. High Court**

This is the first issue which has to be decided in this matter.

(i) Learned Assistant Solicitor General relied upon the judgment in the case of **A.B.C. Laminart Pvt. Ltd.** (7 supra). It is his contention that when clear words like ‘alone’ ‘only’ etc., are used in a clause to limit jurisdiction, the parties have to choose that Court alone in between the two Courts that otherwise have jurisdiction. Therefore, he argues that by a voluntary action i.e. by accepting the prospectus, jurisdiction is only conferred on the Delhi Courts. This argument, at first blush, appears to be interesting. But, this Court is of the firm opinion that these sort of clauses which limit jurisdiction to one Court or the other by using explicit language and words like ‘only’, ‘alone’, ‘exclusively’ etc., will not apply to the jurisdiction that is being exercised by this Court under Article 226 of the Constitution of India. These clauses were upheld by the Hon’ble Supreme Court in cases relating to contract and contractual disputes only.

In the case of **Maharashtra Chess Association v. Union of India (UOI) and Ors.**<sup>11</sup>, the Hon’ble Supreme Court held as follows:

**26.** In the present case, the Bombay High Court has relied solely on Clause 21 of the constitution and bye-laws to hold that its own writ jurisdiction is ousted. The Bombay High Court has failed to examine the case holistically and make a considered determination as to whether or not it should, in its discretion,

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<sup>11</sup> 2020 (13) SCC 285



exercise its powers under Article 226. The scrutiny to be applied to every writ petition under Article 226 by the High Court is a crucial safeguard of the rule of law under the Constitution in the relevant territorial jurisdiction. It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

**27.** It is certainly open to the High Court to take into consideration the fact that the appellant and the second respondent consented to resolve all their legal disputes before the courts at Chennai. However, this can be a factor within the broader factual matrix of the case. The High Court may decline to exercise jurisdiction under Article 226 invoking the principle of forum non conveniens in an appropriate case. The High Court must look at the case of the appellant holistically and make a determination as to whether it would be proper to exercise its writ jurisdiction. We do not express an opinion as to what factors should be considered by the High Court in the present case, nor the corresponding gravity that should be accorded to such factors. Such principles are well known to the High Court and it is not for this Court to interfere in the discretion of the High Court in determining when to engage its writ jurisdiction unless exercised arbitrarily or erroneously. The sole and absolute reliance by the Bombay High Court on Clause 21 of the constitution and bye-laws to determine that its jurisdiction under Article 226 is ousted, is however one such instance.

In view of this clear and categorical enunciation of the law, this Court is of the opinion that it has to take a holistic view of the matter and cannot rely on this clause alone to conclude that this Court has no jurisdiction.

In fact, the Hon'ble Supreme Court clearly said that every writ petition filed under Article 226 of the Constitution of India should be holistically scrutinised and it is not open to the High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

(ii) This Court also agrees with the submission of the learned senior counsel for the petitioner who relied upon the case of ***Nawal Kishore Sharma v. Union of India and others*** (1 supra). Admittedly, both the letters which are subject matter of the challenge



and by which the petitioner's request was negated were addressed to him at Eluru in West Godavari District, which is within the jurisdiction of this Court. Therefore, a fraction or part of the cause of action has arisen within the State of Andhra Pradesh. Therefore, this Court has the territorial jurisdiction to hear and decide this *lis*.

(iii) Even if the clause on which the learned Assistant Solicitor General relies upon is carefully analysed, it says that any dispute in regard to any matter referred to 'herein' shall be subject to the jurisdiction of the Delhi Court alone. This is found in clause 9 page 17 of the prospectus. It states that legal and disciplinary action will be initiated by respondent No.2 for any of the reasons mentioned in this sub-clause which deal with offering illegal gratification, impersonation, furnishing false information etc. It does not refer to other matters mentioned before or use the words 'herein before' or 'herein after'. Therefore, on fact also, this Court is of the opinion that since this is a clause purporting to oust the Court, it has to be strictly construed. It is therefore held that it is limited to the 15 issues which are mentioned in sub-clause.

The issue of jurisdiction has been left open by the Hon'ble Supreme Court in this case and therefore, the same is decided once again. The principle of *res judicata* will not apply as urged by the learned senior counsel for the petitioner.

Thus both on fact and in law, this Court holds that it has the territorial jurisdiction to entertain this writ petition. In view of the finding on the territorial jurisdiction, the other issues are being dealt with in *seriatim*.



**(b) Cut-off date:**

Admittedly, the cut-off date in this case was 28.02.2022. W.P.No.370 of 2022 was allowed by this Court on 25.01.2022. SLP.No.6040 of 2022 was decided on 11.04.2022 but the Hon'ble Supreme Court clearly held that this aspect must be taken note of while dealing with the writ petition. The hearing took place in June, 2022 and the orders are reserved.

In the opinion of this Court, the case law relied upon by the learned Assistant Solicitor General deals specifically with this issue.

The counsel for the petitioner relied upon **Asha's** case (2 supra), but in view of the conflict between the two judgments of the Hon'ble Supreme Court in **Asha** and **Jasmine Kaur's** cases (2 & 9 supra), the matter was referred to the Hon'ble Supreme Court of India in **S.Krishna Sradha's** case (10 supra) and the same is visible from para 1 which is as follows:

1. The issue arises for consideration is whether a student, a meritorious candidate, for no fault of his/her and who has pursued his/her legal right expeditiously without delay, can be denied admission as a relief, because the cut-off date of 30th September has passed. In such a situation the relief which can be given by the Court is to grant appropriate compensation only?

After hearing the submissions and considering the case law on the subject, the Hon'ble Supreme Court of India clearly answered the reference as follows:

**13.** In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the



Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

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

**13.2.** Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 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. (emphasis supplied)

Para 13.2 thus clearly uses the conjunction ‘and’ in the para referred to above. Therefore, this Court is of the opinion that unless all these factors are present in sequence or in conjunction, no relief can be granted to a candidate. The Hon’ble Supreme Court also categorically held in the case that September 30<sup>th</sup> was the cut-off date and in no circumstances, the Court can order admission beyond 30th October of that year (1 month). Although this decision is pertaining to MBBS course, still it is an authoritative pronouncement



of the Hon'ble Supreme Court of India on the issue of cut-off date etc.

Apart from this judgement, the Assistant Solicitor General also relied upon a judgment of **Medical Council of India's** case (8 supra). This was a case wherein the Hon'ble Supreme Court was dealing with the desirability of belated admissions both in graduate and postgraduate courses. This is visible from para 1 of the judgment itself. In para 17 of this judgement it was held as follows:

17. In *Dr. Subodh Nautiyal v. State of U.P. and Ors.* (1993 Supp (1) SCC 593, it was observed that in respect of a technical course, to admit a student four months after the commencement would not at all be correct.

Similarly, in para 18 and 19 by relying upon the case law in ***State of U.P v. Dr Anupam Gupta*** (1993 Supp (1) SCC 594), the Bench of the Supreme Court clearly held that in admitting a student, four months after commencement of the course, would not at all be correct and that to maintain excellence, the courses have to be commenced on schedule and be completed within the schedule. Admission in the midstream would disturb the courses and also work as a handicap to the students themselves. Considering this from a pragmatic point, the Hon'ble Supreme Court held that vacancies in the seat or the course cannot be a ground to give admission. In conclusion, in para 23, the Hon'ble Supreme Court held as follows:

23. ....In conclusion:



(i) there is no scope for admitting students mid-stream as that would be against very spirit of statutes governing the medical education;

(ii) even if, seats are unfilled that cannot be a ground for making mid session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) .....

If the facts in this case are viewed against the backdrop of these two cases, it is clear that the last date for admission into the courses was 28.02.2022. In the revised notice No.25/2022 dated 09.02.2022, a clause was included stating that candidates who applied for a general seat would only be eligible for a general seat and those who applied for sponsored seat will be eligible only for sponsored seat. There will be no merger of seats from general to sponsored or sponsored to general. This clause is also subject matter of challenge.

It is thus clear that the petitioner is seeking a midstream admission on the ground that vacant seats in such courses should not be allowed to go un-filled only on the ground that a cut-off date has expired. He relies upon **Asha's** case (2 supra) and other judgments to argue that the petitioner has been agitating his claims without any delay and is otherwise a meritorious candidate. Therefore, it is contended that the seat should not be left vacant and an order can be passed granting the relief. This Court is of the opinion that the judgment of the Hon'ble Supreme Court of India in





the case of **S.Krishna Sradha's** case (10 supra), which is a judgment of three Bench Judges, is clearly held against the petitioner. Further conclusions on this aspect while relying on para 13.02 of **S.Krishna Sradha's** case (10 supra) are mentioned at the end of the judgment.

**(c) Sponsored seat/de-reservation:**

In line with the case law submitted, learned counsels argued on this aspect and called it a de-reservation of a seat. In the strict sense this cannot be called de-reservation, but is more in the nature of re-classification of a seat. Learned counsel for the petitioner relied upon **Index Medical College's** case (3 supra) wherein the Hon'ble Supreme Court held that not filling up of the medical seats is not a solution to the issue and that the seats being kept vacant result in a huge financial loss to the institution apart from being the national waste of resources. Seats in recognized medical colleges not being filled up is detrimental to the public interest as per the Hon'ble Supreme Court. Other judgments which are enclosed to the writ petition including **Dr Sadhna Devi's** case (4 supra) and **Dr Preeti Srivastava's** case (5 supra) are also relied upon for the same argument. It was held in **Dr Sadhna Devi's** case and other cases that if a seat reserved for SC/ST/OBC candidates cannot be filled up as there are no qualified candidates, such seats should be given to the general category candidates.

This is the lynchpin of the argument by the learned senior counsel. However, a deeper examination of the facts shows that sponsored candidates have to fulfil certain distinct eligibility criteria



to be considered for admission. For example, the brochure and rules/procedures relating to the 'sponsored seats' at AIIMS, Delhi (respondent No.2) clearly states that the seat in D.M/M.ch course in which the candidate is being sponsored should not be available in the State to which the candidate belongs. A certificate to this effect signed by the concerned authority should be furnished. The sponsored candidate should also be employed by the sponsoring authorities for 5 years after the training is completed. The candidate should also be paid the entire emoluments by the sponsoring authority for the entire training period and AIIMS Delhi is not responsible for the same. They are also called as "Trainees".

As far as respondent No.3 PGIMER, Chandigarh is concerned, (1) the sponsored candidate should also be a regular permanent employee for at least three years with the sponsoring authority. (2) The candidate after the training should be employed by the sponsoring authority for atleast 5 years in the specialty and (3) the emoluments/stipend etc., will be paid by the sponsoring authority alone. Lastly, the sponsoring institute can only nominate one candidate for a specialty. Sponsorship is also accepted from Central or State Government departments, Institutions, autonomous bodies of State or Central Government and also Public Sector Colleges etc., recognised by the Medical Council of India.

The respondents have also spelt out with clarity why this sponsored seats have been created. Admittedly, (since there is no denial in the rejoinder), these seats are created to provide training to in-service doctors, but would then return and serve the institution



and also the general public throughout the country including remote areas where proper medical facilities are not otherwise available. As a matter of practice also State Governments/Central Governments and others have sent doctors from Government hospitals and dispensaries to get training and education in specific fields, so that they can return to the institution after the training and fill the lacuna in their knowledge by providing medical care in such cases and thereafter serve the country. The AIIMS states that sponsored candidates are sent from various States to fill the void or requirement in the hospitals, dispensaries and colleges.

Therefore, it is clear that the candidates who apply for the sponsored seats are a distinct category of applicants who have to fulfil certain eligibility criteria for being treated as a sponsored candidate and also have to assume certain responsibilities after the completion of the training. Admittedly, the petitioner does not fit into this clause. Thus the petitioner and the candidates for sponsored seats cannot be treated as 'equals' for the petitioner to allege inequality or a violation of constitutional rights.

The petitioner essentially relied upon the judgments of the Hon'ble Supreme Court of India like ***Index Medical College,'s*** case (3 supra) ***Asha's*** case (2 supra) and ***Sadhna Devi cases etc.,*** to argue that seats should not be left un-filled and it would be a national loss, if such seats left un-filled. However, the case law on the subject includes the decision in ***S.Krishna Sradha's*** case (10 supra). After considering the judgments and the conflict between the cases of ***Asha*** and ***Jasmine Kaur's*** cases (2 & 9 supra), three



Hon'ble Judges of the Supreme Court on a reference which is mentioned earlier clearly answered the reference in 13.1 and in particular 13.2. The paras are reproduced earlier. If the present case is examined against the backdrop of finding of larger Bench of Hon'ble Supreme Court, this Court finds that this Court has to be convinced on the following five grounds viz., (1) there is no fault attributable to the candidate, (2) candidate has pursued his legal remedies without delay, (3) there is a fault only on the part of the authority, (4) there is a breach of rules and regulations and other principles for admission which would violate the right of equality and equal treatment and (5) the time schedule prescribed is not over. If these conditions are present and the Court is of the opinion that it is an exceptional circumstance and is a rarest of rare case, the Court can direct admission in the course by increasing the one or two seats. However, a note of caution is also sounded that this direction can only be given within one month from the cut-off date.

This Court finds that in this case all the conditions are not fulfilled. A perusal of the record reveals that the petitioner is not eligible to be considered as a sponsored candidate as he does not have the basic requisite qualifications including employment to be called a 'sponsored' candidate. The candidate has pursued his remedies without delay. However, there is no fault on the part of the authorities because they rightly relied upon the rule position to hold that the candidate does not fulfil the criteria of a sponsored candidate. There is no clear and apparent breach of the rules and regulations let alone the violation of right of equality and equal



treatment. This Court has already held that sponsored candidates are a distinct class by themselves and cannot be treated on par with general candidate. The last date has also expired both under the original notification and the revised notification for January, 2022 sessions. The extra '30 day' period has also expired.

Hence, in conclusion, this Court holds that it has the jurisdiction to hear and decide this case but on merits, this Court holds that the petitioner is not entitled to any relief in this writ petition.

Accordingly the writ petition is dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

**PRASHANT KUMAR MISHRA, CJ**

**D.V.S.S. SOMAYAJULU, J**

KLP

Note: L.R.Copy be marked.