

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 4th MAY, 2022**

WRIT PETITION No. 8499 of 2021**BETWEEN :-**

Ms. Shruti Patidar D/o
Bhagwan Patidar, Aged About
22 Years, Occupation: Student
R/o Ward No.11, Ab Road,
Varun Steel, Dhamnod, District
Dhar (Madhya Pradesh)

.....**Petitioner**

(By Shri Aditya Sanghi, Advocate)

AND

1. The State Of Madhya Pradesh Thr. Its Principal Secretary Medical Education Department Vallabh Bhawan, Bhopal (Madhya Pradesh)
2. The Director Medical Education, Satpura Bhawan Bhopal, M.P.
3. The Medical Science University Jabalpur through its Registrars, M.P. Ayurvigyan Vishwavidyalaya Medical

College Campus Jabalpur
(Madhya Pradesh)

4. Amaltas Institute of Medical Sciences, (unit of Amaltas Educational Welfare Society) Through its Dean Village Bangar, Dewal Ujjain Highway Distt. Dewas (Madhya Pradesh)

.....**Respondents**

(By Ms. Janhavi Pandit, learned Dy. Advocate General for the respondent Nos. 1 and 2/State)

(By Shri Siddharth Sharma and Shri Pranay Shukla, learned counsel for the respondent No. 3)

(By Shri Paritosh Gupta, learned counsel for the respondent No. 4)

Whether approved for reporting	Yes.
Law Laid down :-	<p>1. <u>Admission in MBBS Course</u> – passing of NEET Examination – The selection is governed by Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulka Nirdharan) Adhiniyam 2007, Medical Council of India Regulations On Graduate Medical Education, 1997 and Madhya Pradesh Siksha Pravesh Niyam, 2018.</p> <p>2. <u>Regulation 5</u> – As per this regulation, the selection of a student in a Medical College is entirely based on the merit of the candidate.</p> <p>3. <u>Regulation 5A</u> – The admission in the college</p>

must be based on the common counseling based on merit list of National Eligibility Entrance Test.

4. Clause 5-A (3) – The counseling for admission to MBBS Course needs to be conducted in State of Madhya Pradesh by Government of Madhya Pradesh.

5. Regulation 5(7) – The admission of any candidate made in contravention of Regulations and judgments of Supreme Court will not bestow any right to such candidate and such candidate deserves to be discharged by the Council forthwith.

Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan) Adhiniyam, 2007.

6. Section 3(d) – Common Entrance Test is defined which provides that the test conducted through a single window procedure by the State Government or any authorized agency.

7. Section 7 – Admission – Admission in the college/unaided educational institution must be made strictly in consonance with the Adhiniyam of 2007, Admission Rules and other regulations governing the field. Thus, merit cannot be compromised at any cost. The petitioner herein was not selected by following the ‘due process’. She is not the most meritorious candidate in her category. Merely because she alone was available in the campus of respondent No.4/institution, no enforceable right is created in her favour. Her admission runs contrary to the Regulations, Admission Rules and the provisions of Adhiniyam of 2007.

	<p>8. <u>Equity and misplaced sympathy</u> - Undue lenient view on so called humanitarian consideration will amount <i>misplaced sympathy</i>. The advantage given by illegal means will jeopardize the merit and purity of selection process. Thus, merely because petitioner wasted few years in prosecuting studies will not create any right or equity in her favour.</p> <p>9. <u>Effect of declaring Rule 12(8)(a) as ultra vires by Supreme Court</u> – Even if it is accepted that the rule declared as <i>ultra vires</i> vanished from the statute book from its inception, the fact remains that selection process adopted by college runs contrary to the statutory governing provisions and hence the judgment of Supreme Court in Index Medical College, Hospital & Research Centre vs. State of Madhya Pradesh and others, 2021 SCC Online SC 318 is of no assistance to the petitioner.</p> <p>10. <u>Relief</u> – The petitioner with the connivance of respondent No.4 got admission in a manner which is unknown to law. Petitioner, if law permits, can sue respondent No.4/College for wastage of her time.</p>
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O R D E R (Oral)

Sujoy Paul, J.:-

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed that a writ of mandamus be issued to the respondent No. 3 to issue the enrollment number to the petitioner for first

professional examination of MBBS Course (Academic Session 2019-20) and to permit her to appear in the examination as a special candidate. It is further prayed that the respondents be directed to compensate the petitioner for the loss suffered by her of two golden years of her life because of the omission and commission of the respondents. Lastly, it is prayed that a mandamus be issued to the respondents to treat her with the regular batch of 2019-20 with other candidates who have appeared in the first professional examination of MBBS.

Petitioner's contentions :-

2. In nutshell, the case of the petitioner is that she appeared in NEET (UG) 2019 examination and scored 362 marks. She was allotted a seat of MBBS course in the Amaltas Institute of Medical Science, Dewas (MP) (a private medical collage). The petitioner belongs to OBC category. The score card of NEET examination is filed as Annexure P/1 and admission receipt dated 16.08.2019 is filed as Annexure P/2.

3. Online counseling choice of petitioner for second round of counseling, 2019 is filed as Annexure P-3. The petitioner belongs to reserved category i.e. OBC category and therefore, she was allotted the seat in Amaltas Institute of Medical Science. The seat was allotted to her which was lying vacant because of non-joining of a Scheduled Tribe

category candidate Ms. Shristi Thakur. The petitioner's contention is that petitioner ultimately occupied a reserved category seat and did not encroach any other category.

4. Shri Aditya Sanghi, learned counsel for the petitioner submits that after the said admission in the Amaltas College, the petitioner scored 70 marks out of total 118 marks in First Batch of MBBS 2019-2020. The result showing the same is filed as Annexure P/6. It is urged that petitioner has completed all the formalities and she is regularly attending the classes in respondent No.4/College. This is nobody's case that petitioner was not eligible to appear in the first professional examination conducted by respondent No.3. Although, petitioner burnt her midnight oil and succeeded in the examination in flying colours, she could not reap the benefits because enrollment number was not issued to her in the aforesaid examination. The petitioner was shocked and surprised to know the same and expected that her grievance will be redressed at the level of the respondents. Since, enrollment number was ultimately not issued, she filed the present petition seeking the aforesaid relief.

5. Learned counsel for the petitioner further submits that petitioner deposited all the requisite amount of fees on 03.10.2019 and 08.11.2019 by Annexure P/4 and P/5, respectively. She appeared in second internal

professional examination and out of total 135 students those 20 students who cleared the examination included the name of present petitioner.

6. For the purpose of taking admission, the petitioner filed an affidavit dated 16.08.2019 (Annexure P/8) and on the strength of the same, she was permitted to occupy a seat in the College. On 05.02.2021, an e-mail application for grant of enrollment number was sent. The Supreme Court by interim order dated 03.02.2021 permitted initiation of process for filling up seven unfilled seats of first year MBBS Course in the mop-up round for the year 2020-2021 through college level counseling within seven days. The respondent No.4/College sent a letter dated 04.02.2021 to allow the petitioner to appear in the examination by issuing enrollment number in her favour, but this letter went in vain.

7. On the basis of aforesaid factual backdrop, the learned counsel for petitioner submits that the college rightly conducted the college level counselling before the cut-off date in the year 2019. No other student was present at that particular time in the last minute and, therefore, seat was rightly allotted to the petitioner by respondent No.4.

8. The next contention is that the petitioner was selected in college level round of counseling which is permissible as per the procedure prevailing in the State of Madhya Pradesh. It is further argued that in the year 2019, in the mop-up round, one seat (OBC quota) was allotted to an

OBC category candidate in the respondent/college. After allotment of the seat, the said candidate did not turn up in the college. To seek direction in this regard about said vacant seat, the respondent No.4 sent an e-mail to respondent No.2.

9. Although, counseling scheduled till college level conseling round got cancelled vide DME's letter dated 16.08.2019, since petitioner was present in respondent No.4/College, looking to her merit and eligibility she was granted provisional admission.

10. It is strenuously contended that the issue revolves around the fact that whether petitioner was rightly granted admission in the college on the basis of her merit for that particular seat which became vacant on the last date and last minute and was laying vacant in a private medical college. The college duly informed the Director Medical Education (DME) about the admission given to the petitioner but because of inaction on the part of DME, petitioner is unable to get the benefit of enrollment number and passing of the MBBS first professional examination. Shri Sanghi fairly submitted that the petitioner was not the most meritorious OBC candidate. More meritorious candidates in the said category were very much available but the petitioner was the only candidate available in the campus on the crucial date. Since she cleared the NEET examination, she

was very much eligible to be considered and no fault can be found in the action of respondent No.4 in granting her admission.

11. Furthermore, it is contended that DME did not reflect the name of petitioner in the list of selected candidates and did not send his name to the respondent/University and University did not allot the enrollment number to the petitioner. Resultantly, despite her success in the examination, the petitioner is unable to enjoy the fruits of it.

12. The petitioner has filed written submissions contending the aforesaid and urged that three golden years of petitioner's life are exhausted while studying MBBS course in respondent No.4/College. If the petitioner's enrollment number is not granted, the entire exercise and time will go waste.

13. In support of aforesaid contention, Shri Aditya Sanghi, learned counsel for the petitioner placed reliance on the judgment of Supreme Court in **W.P. (C) No.40/2018 (*Saraswati Education Charitable Trust & another vs Union of India & others*)** decided on 24/02/2021, judgment passed in **Civil Appeal No.4424/2018 (*Kashmi Bhagtani vs. State of Madhya Pradesh & Ors.*)**.

14. Lastly, recent judgment of Supreme Court in the case of **Index Medical College, Hospital & Research Centre vs. State of Madhya Pradesh and others, 2021 SCC Online SC 318** is relied upon. It is

urged that the Rule 12(8)(a) of **Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018** (in short ‘**Admission Rules**’) is held to be unconstitutional by the Supreme Court. This Rule, submits Shri Sanghi was the basic hurdle to the private institutions to fill-up the seats which are lying vacant after the mop-up round and through college level counseling. Since this Rule is declared as *ultra vires*, the presumption is that this Rule was void *ab initio* and effect of recent judgment will be as if this Rule was not there in the statute book since beginning. In this view of the matter, there exists no hurdle for the petitioner for getting the benefit of the said admission.

15. Shri Sanghi, learned counsel for the petitioner has taken pains to contend that all the objections taken by the State in the return are taken care of by the Supreme Court while delivering the judgment in **Index Medical College’s case (supra)**.

Respondents’ contentions :-

16. Sounding a *contra* note, Ms. Janhavi Pandit, learned Deputy Advocate General placed reliance on the return and various judgments of this Court, Delhi High Court and the Supreme Court. The bone of contention of learned Deputy Advocate General is that the admissions in Medical Colleges are governed by **Medical Council of India Regulations on Graduate Medical Education, 1997** (in short

‘Regulations’). In addition, the **Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan) Adhiniyam 2007** (in short ‘**Adhiniyam of 2007**’) provides the method for filling-up the seats in the State of Madhya Pradesh.

17. During the course of the argument, Ms. Pandit placed reliance on Regulation 5 which deals with '*selection of students*', Regulation 5-A deals with '*common counseling*' which stood amended by insertion of Clause 5-A(3). Reliance is also placed on Regulation 5(7) of the same Regulation to contend that no institution can admit any candidate to the MBBS course in violation of criteria/procedure laid down by these Regulations and pursuant to the judgments passed by Hon'ble Supreme Court.

18. The definition contained in Section 3(d) of the Adhiniyam of 2007 is relied upon to urge that Common Entrance Test has to be conducted through a single window as prescribed by the State Government or by any agency authorised by it. Section 5 of the Regulation is relied upon to contend that eligibility regarding admission in Private Un-aided Institutions is based on the directions notified by the appropriate authority. Section 6 deals with Common Entrance Test and entire admission process needs to be made on the basis of Common Entrance Test as prescribed by the State Government. Similarly, Section 7 deals

with admission and makes it clear that any admission made in contravention of provisions of the Act shall be treated as void.

19. Learned Deputy Advocate General relied on the Division Bench judgment of this Court (Indore Bench) in **W.P. No.11117/2019 (Dr. Akansha Nayak Vs. State of M.P. and others)** decided on 27.7.2019. By placing reliance on certain paragraphs of this judgment, it is argued that the private colleges do not have any right whatsoever to directly admit the students contrary to the provisions of Statute. Another judgment of this Court in **W.P. No.12561 of 2017 (Sukh Sagar Medical College and Hospital, Jabalpur vs. Medical Council of India and others)** is relied upon to contend that admission made contrary to the prescribed admission process and in breach of centralized counseling by the colleges on its own is bad in law. A judgment of Delhi High Court reported in **LAWS (DLH) 2019 (8) 127 (Deepanshu Bhadoriya Vs. Medical Council of India)** is relied upon to bolster the submission that a consistent view is taken by M. P. High Court and Supreme Court in the case of **State of Madhya Pradesh Vs. Jainarayan Chouksey and others (2016) 9 SCC 412** that any admission contrary to Rule does not create any right or equity. Reference is made to **Jainarayan Chouksey (supra)** wherein Supreme Court held that Centralized Entrance Test is followed by Centralized State Counseling by the State to make it one

composite process. Therefore, admission on all medical seats must be conducted by the centralized counseling only by the State Government and none else. Heavy emphasis is laid on this finding read with the provisions of Regulations and Adhinyam of 2017 by learned Deputy Advocate General.

20. Ms Pandit, learned Dy Advocate General also placed reliance on communication dated 16.8.2019 (Annexure R/2) wherein in response to respondent No.2/College's request for filling the vacant post of Ms. Shristi Thakur, the DME promptly informed the college to examine relevant **Admission Rules** published on 19.6.2019. The admission given by the college runs contrary to the **Regulations, Admission Rules** and the provisions of **Adhinyam 2017**. Lastly, recent judgment of Supreme Court in the matter of **Abdul Ahad and others vs. Union of India and others 2021 SCC OnLine SC 627** is referred to contend that the petitioner, a back door entry is not entitled for any equitable relief. It is further urged that if somebody has secured a seat contrary to the governing Statutory provisions, no benefit can be obtained on the basis of said illegality.

21. Shri Paritosh Gupta, learned counsel for the College urged that the college on the last date when Ms. Shristi Thakur did not turn up, promptly informed the DME about said aspect and since the petitioner a solitary

eligible candidate was available in the premises, obtained an affidavit (Annexure P/8) dated 16.8.2019 from her and accordingly granted her admission. The provisional admission has been made and in this act, there is no illegality or irregularity.

22. Shri Sidharth Sharma submits that University can grant enrollment number provided the DME sends the list of candidates to the University. Since, the petitioner's name did not find place in the list so submitted by the DME to the University, no fault can be found in the action of the University in not providing enrollment number to the petitioner.

FINDINGS :-

23. No other point is pressed by learned counsel for the parties.

24. We have heard the learned counsel for the parties at length and perused the record.

25. Before dealing with rival contentions of the parties, we deem it proper to refer the relevant statutory provisions. The relevant portion of Regulation 5 reads as under :-

“5. Selection of Students :- The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country.”

(Emphasis Supplied)

26. Regulation 5-A reads thus :-

“5A Common Counseling :

(1) There shall be a common counseling for admission to MBBS course in all Medical Educational Institution on the basis of merit list of the National Eligibility Entrance Test.

(2) The Designated Authority for counseling for the 15% All India Quota seats of the contributing States shall be the Directorate General of Health Services.

(3) The counseling for all admission to MBBS Course in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company shall be conducted by the State/Union Territory Government. Such common counseling shall be under the over-all superintendence, direction and control of the State/Union Territory Government.”

(Emphasis Supplied)

27. Clause 5-A (3) was inserted which reads as under :-

“The counseling for admission to MBBS course in a State/Union Territory, including, Medical Educational Institutions established by the State Government, University established by an Act of State/Union Territory Legislature, Trust, Society, Minority Institutions, Municipal Bodies or a Company shall be conducted by the State/Union Territory Government.”

(Emphasis Supplied)

28. Lastly, relevant portion of Regulation 5(7) is reproduced as under :-

“No authority/institution shall admit any candidate to the MBBS course in contravention of the criteria/procedure as laid down by these Regulations and/or in violation of the judgments passed by the Hon’ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority/institution which grants admission to any student in contravention/violation of the Regulations and / or the judgments passed by the Hon’ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.”

(Emphasis Supplied)

29. Certain provisions of the **Adhiniyam of 2007** are also relevant. The Common Entrance Test is defined in Section 3(d), which is reproduced as under :-

“(d) ‘common entrance test’ means an entrance test, conducted for determination of merit of the candidates followed by centralized counseling for the purpose of merit based admission to professional colleges or institutions through a single window procedure by the State government or by any agency authorized by it.”

30. Section 5 defines ‘eligibility’ and reads thus :-

“5. Eligibility :- The eligibility for admission to a private unaided professional educational institutional shall be such as may be notified by the appropriate authority.”

31. Section 6 deals with ‘Common Entrance Test’ and provides thus :-

“6. Common entrance test. - In private unaided professional educational institution, admission to sanctioned intake shall be on the basis of the common entrance test in such manner as may be prescribed by the State Government.”

32. Section 7 talks about ‘Admission’ and reads as under :-

“7. Admission :- Every admission to private unaided professional educational institution shall be made in accordance with the provisions of this Act or the rules made thereunder and every admission made in contravention thereof shall be void.”

33. A plain reading of relevant portion of Section 5 makes it crystal clear that sole basis of selection of a candidate in Medical College must be based on merits. Regulation 5-A in no uncertain terms makes it clear that there shall be a common counseling for admission to MBBS Course in All Medical Institutions on the basis of merit list. Newly inserted clause 5-A (3) provides that the counseling shall be conducted by the State/Union Territory Government. In Rule 5(7) it was made clear that any admission made contrary to the Regulations will be void.

34. The Apex Court in the case of **Jainarayan Chouksey (supra)**

opined in para-5 which is reproduced as under :-

“We have heard the learned counsel for the parties at length. We observe that mandate of our judgment was to hold centralized entrance test followed by centralized State counselling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by the centralized counselling only by the State Government and none else.”

(Emphasis Supplied)

35. A Division Bench of this Court in W.P. No.12561/2017 (Sukh Sagar Medical College And Hospital Jablapur Vs. Medical Council Of India And Others) held as under :-

Though several issues and arguments have been raised before this Court to justify the admissions granted to the private petitioners and regarding the validity of the admissions made, however, we do not think it necessary to go into each one of the arguments raised by the parties in view of the following admitted and undisputed facts:-

- i) That the two private petitioners have not been allotted the petitioner/college namely; Sukh Sagar Medical College and Hospital, Jabalpur by the centralized counselling conducted at the State level.**
- ii) That the petitioner Shivani Sahu was never called for the centralized State level counselling.**
- iii) That the admissions have been granted to the two private petitioners by the petitioner/college at its own level.**
- iv) That there is no provision in the Act, the Rules or**

the Regulations governing admissions which permit the college to conduct the counselling at its own level or to grant admission on its own in the MBBS course.

(Emphasis Supplied)

36. Another Division Bench in W.P. No.11117/2019 (Dr. Akanksha Nayak vs. State of M.P. and others) opined :-

The statute which governs the field is very clear, there cannot be any admission without the process of counselling and without following the M.P. Private Medical and Dental Post Graduate Course Admission Rules, 2016. It is really unfortunate that inspite of repeated orders passed by the Hon'ble Supreme Court as well as by this Court, admission are being granted through backdoor ignoring the statutory provisions, interim orders are passed permitting the students to continue, as has been done in the present case by the appellate Authority vide order dated 18.4.2019 and finally it is the student who suffers. This Court cannot legalize an invalid admission by taking a lenient view, contrary to the statutory provisions. The student shall be free to avail the remedy as may be available, for redressal of their grievance against the Institutions, if so advised.

(Emphasis Supplied)

37. The curtains are finally drawn on the issue by above authoritative pronouncements and it became clear that colleges without following the procedure prescribed cannot grant admission to the candidates on their own.

38. As noticed above, in the instant case, the petitioner is admittedly not selected through any prescribed process of counseling. It is also clear that petitioner was not a candidate having highest merit in the relevant category for the purpose of counseling. As projected by the petitioner, the only feather in her cap is that when selected candidate Ms. Shristi Thakur was not available or did not report, she was coincidentally the only OBC candidate present in the premises of the College to whom College offered the seats and she occupied it on the strength of the affidavit Annexure P/8. Thus, petitioner is also not claiming that she is the most meritorious candidate to occupy a reserved category seat. Shri Aditya Sanghi, learned counsel for the petitioner has fairly admitted this fact during the course of the argument.

39. Putting it differently, there may be other more meritorious candidates than the present petitioner. In Para-9 of the return, the State Government has categorically mentioned that petitioner's position was 3146 in the list of eligible candidates. Thus, by no stretch of imagination, it can be said that petitioner was the most meritorious candidate and because of non-joining of Ms. Shristi Thakur, it was her turn to occupy the said seat.

40. Interestingly, the petitioner in the affidavit had mentioned that she has gone through the entire statutory provisions and with open eyes has

taken admission on her own risk. The ancillary question is whether in this backdrop, she can be given benefit of equity for prosecuting the studies from August, 2019.

41. This aspect is dealt with by Supreme Court in the recent judgment in **Abdul Ahad (supra)**. The Apex Court in Para-25 held as under :-

“It could thus clearly be seen that the private counseling by Glocal Medical College was conducted contrary to the notification issued by the State of Uttar Pradesh, which notification, in turn, was based on the judgment of this Court in the case of Modern Dental College and Research Centre (supra), which was decided on 02.05.2016. Not only that, but this Court by order dated 22.09.2016 had further clarified the position.”

(Emphasis Supplied)

42. The question of *equity and hardship* is dealt with in Para-30 which reads thus :-

“It will further be appropriate to refer to the following observations of this Court in the case of *Gurdeep Singh vs. State of J & K*.

“12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in

courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.”

(Emphasis Supplied)

The same view is taken by this Court in **Akansha Nayak (supra)**.

43. The aforesaid discussion makes it crystal clear that petitioner did not participate in any authorized counseling conducted by the State. Indeed, State in response to e-mail, made it clear that admissions can be made only as per **Admission Rules, 2018**. The petitioner's admission cannot be said to be in consonance with and in conformity with the **Regulations, Admission Rules and Adhiniyam of 2007**. Thus, approving petitioner's admission would be an example of misplaced sympathy.

44. We will be failing in our duty, if argument of Shri Aditya Sanghi, learned counsel in the light of judgment of Supreme Court in **Index Medical College (supra)** is not considered. As pointed out, the Rule 12(8)(a) of the Rules is held to be unconstitutional.

The said Rule reads as under :-

“(8)(a) The vacant seats as a result of allotted candidates from MOP-UP round not taking admission or candidates resigning from admitted seat shall not be included in the college level counselling (CLC) being conducted after MOP-UP round”.

(Emphasis Supplied)

45. The Rule created a bar for inclusion of vacant seat of mop-up round for inclusion in college level counselling. To this extent, Rule

is held to be unconstitutional. Even for college level counselling, the method of counselling prescribed in the **Regulations, Admission Rules and Adhinyam of 2007** are required to be followed. No indefeasible and unfettered right is created in favour of the college to grant admission to a candidate on its own despite his/her low merit and without following the 'due process'. Even if Rule 12(8)(a) could not pass the test of constitutionality, it cannot be forgotten that aforesaid statutory provisions of **Regulations, Admission Rules and Adhinyam of 2007** reproduced hereinabove are still available in the statute book. Withstanding those mandatory provisions in the statute books, no admission, which runs contrary to the mandatory provision can get a stamp of approval from this Court.

Rule 12(8)(a) which is held to be ultra vires by the Supreme Court provided an impediment for unfilled mop-up round seats for the purpose of their inclusion in the college level counseling which is conducted after mop-up round. Even if we agree with the argument of Shri Aditya Sanghi Advocate that the setting aside of said Rule will relate back to the date of insertion of Rule 12(8)(a), it is clear that even if said seats can be included in college level counseling, said counseling must be done as per the

Regulations, Adhinyam, 2007 and the Admission Rules. The merit of candidates cannot be compromised and ignored in view of conjoint reading of statutory provisions reproduced hereinabove.

46. In view of foregoing analysis, in our view, the admission granted to the petitioner by respondent No.4/College runs contrary to law and cannot be countenanced. No fault can be found in the action of the University in not providing enrollment number to the petitioner whose name was not forwarded by the DME to the University. This order will not come in the way of the petitioner to take recourse of law against the respondent No.4 relating to the grievance of wastage of period while prosecuting studies in the respondent No.4 college. Thus, petition is devoid of substance and is hereby **dismissed**. No cost.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE