2019 SCeJ 3010

SUPREME COURT OF INDIA

Before : Justice Arun Mishra, Justice M.R. Shah and Justice B.R. Gavai, JJ.

S. KRISHNA SRADHA — Appellant

versus

THE STATE OF ANDHRA PRADESH AND OTHERS — Respondent

Civil Appeal No. 1081 of 2017

13.12.2019

(i) Education Law - Admission into MBBS Course - 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?

Held,

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:

(i) 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 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 restitutional 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.

Chandigarh Admn. vs. Jasmine Kaur, (2014) 10 SCC 521 *overruled.* ***Asha v. Pt. B.D. Sharma UHS, (2012) 7 SCC 389*** *affirmed*

[Para 9]

(ii) Education Law - Admission to a professional course - For a student/ candidate seeking admission in professional courses more particularly the medical course each year is very important and precious - Similarly, getting admission in medical course itself is very important in the life of a candidate/student and even a dream of man - In light of the above, the question for consideration is whether compensation for a meritorious candidate, who has been denied the admission illegally and arbitrary having approached the court in time can be said to be just and equitable relief? – Constitution of India, Article 14. [Para 8.1]

Held,

The right to equal and fair treatment is a component of Article 14 of the Constitution. As held by this Court **Asha** (Supra) that a transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for no fault of a candidate/student violates principles of Article 14 is that the citizen injured must be put back to his/her original position. In that sense, the primary relief is restitutionary. As observed hereinabove, for a meritorious student seeking admission in medical course is very important in the life of student/ candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her fundamental rights. Compensation could be an additional remedy but not a substitute for restitutionary remedies. In case of medical admissions, even the restitutionary remedy of providing a seat in the subsequent year would lead to loss of one full academic year to a meritorious candidate, which cannot be compensated in real terms. Thus compensation for loss of year could be provided, but denial of admissions to a meritorious candidate cannot be compensated in monetary terms. Thus denial of admission in medical course to a meritorious candidate for no fault of his/her and though he/she has approached the Court in time and despite the same not granting any just and equitable relief would be denial of justice. Therefore, the question is what relief the Court can grant by which right to equal and fair treatment to a candidate are protected and at the same time neither there is injustice to other candidate/student and even compromising with the quality education. Therefore, a balance is required to be struck. However, at the same time it can safely be said that the view taken by this Court in ***Chandigarh Admn. vs. Jasmine Kaur, (2014) 10 SCC 521*** , that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of his/her. Therefore we are of the view that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in paragraph 33.3 in the case of ***Chandigarh Admn. vs. Jasmine Kaur, (2014) 10 SCC 521,*** are satisfied, the Court can grant exceptional relief to the candidate of granting admission even after the cut off date is over.

Chandigarh Admn. vs. Jasmine Kaur, (2014) 10 SCC 521 *overruled.* ***Asha v. Pt. B.D. Sharma UHS, (2012) 7 SCC 389*** *affirmed*

[Para 8.2]

Cases Referred

1. *Asha vs. Pt. B.D. Sharma UHS, (2012) 7 SCC 389*
2. *Chandigarh Admn. vs. Jasmine Kaur, (2014) 10 SCC 521*
3. *Chhavi Mehrotra vs. Director General Health Services, (1994) 2 SCC 370*
4. *Faiza Chowdhary vs. State of J & K, (2012) 10 SCC 149*
5. *Indu Kant vs. State of U.P., (1993) Suppl (2) SCC 71*
6. *MCI vs. Madhu Singh, (2002) 7 SCC 258*
7. *Neelu Arora vs. Union of India, (2003) 3 SCC 366*

Mr. K. Parameshwar, Advocate and Mr. M.V. Mukunda, Advocate, for the Appellant; Mr. Guntur Prabhakar, Advocate, Mr. Y. Raja Gopala Rao, Advocate and Mr. Gaurav Sharma, Advocate, for the Respondent.

JUDGMENT

M.R. Shah, J. - 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?

2. Having noticed the conflict between the pronouncement of this Court in **Asha v. Pt. B.D. Sharma UHS, (2012) 7 SCC 389** and **Chandigarh Admn. v. Jasmine**

Kaur, (2014) 10 SCC 521 the aforesaid issue is referred to a larger Bench.

3. At the outset, it is required to be noted that in the present case, in spite of submitting the necessary material in support of the claim of the appellant for reservation in the sports and game category for admission into MBBS Course, she was denied due priority in admission into MBBS Course. Therefore, the appellant immediately approached the High Court seeking admission in the reserved quota of sports and games category. However, it was found that at the time the petition was heard, the Academic Session for the year in question already commenced from 01.09.2015 and as per the decision of this Court the last date for admission would be 30.09.2015, the High Court considering the decision of this Court in the case Jasmine Kaur (Supra) observed that no direction can be issued to the appellant for grant of admission for the Academic Session 2015-16. However, relying upon the decision of this Court in the case of Jasmine Kaur (Supra), the High Court granted compensation of Rs. 5 lakhs. It is required to be noted that the High Court came to a categorical and unequivocal conclusion that the appellant was entitled to get priority. It was also found that the appellant was more meritorious than others on the basis of the marks obtained. However, the High Court denied the admission solely on the ground that time limit has expired. The High Court has relied upon the decision of this Court in the case of **Jasmine Kaur** (supra). In the case of **Asha** (supra) this Court held that in rarest of rare cases, when the Court returns the finding that (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations, an exception may be made to 30th September cut-off date and in an exceptional case the Court can direct for admission even in a case where cut-off date as directed by this Court had expired. As observed hereinabove, the contrary view is taken subsequently in the case of **Jasmine Kaur** (Supra) and therefore, the matter is referred to a larger Bench to consider the aforesaid issue.

4. Learned Counsel Mr. K. Parameshwar appearing on behalf of the appellant, has vehemently submitted that the present case refers only to cases where (i) no fault is attributable to the candidate; (ii) the candidate has pursued his/her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations. It is submitted that the relief of admission is being denied because the case has been pending in the relevant Court and the time for admission has expired. It is vehemently submitted by Learned Counsel appearing on behalf of the appellant that even in a case where a candidate is meritorious and though entitled to admission, but denied by the authorities illegally and irrationally and though no fault is attributable to the candidate and the candidate has pursued his/her rights and legal remedies expeditiously and without delay and when there is fault on the part of the authorities and apparent breach of rules and regulations, to deny the admission would be injustice to such a meritorious candidate and punishing him/her for no fault of him/her. It is submitted that it is therefore rightly observed in the case of **Asha** (supra) that in rarest of rare cases, the Court can, while exercising powers under Article 226 and/or under Article 32 of the Constitution of India can direct to grant admission despite the fact that the time for admission has expired.

4.1. Learned Counsel for the appellant has further submitted that earlier this Court has considered different remedies in cases of medical admissions where candidates were denied medical seats.

4.2. It is submitted by the Learned Counsel appearing for the appellant that in the case of **Indu Kant vs. State of U.P., (1993) Suppl (2) SCC 71**, this Court has observed therein that in case where the candidate is found to be meritorious, she can be accommodated in a subsequent year with a direction that seats be increased in the next year.

4.3. It is submitted by learned counsel for the appellant that when the candidate is found to be meritorious and denied the admission more particularly in the courses like MBBS and has approached the Court expeditiously, to grant relief only of compensation cannot be said to be just and equitable relief.

4.4 It is submitted that right to equal and fair treatment is a component of Article 14 of the Constitution. It is submitted that a transparent and fair procedure is the duty of every legal authority connected with admissions. It is submitted that in such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21. It is submitted that in the case of violation of constitutional rights, restitution is the norm and compensation, an exception. It is submitted that the citizen injured must be put back to his/her original position. It is submitted that in that sense, the primary relief is restitutionary.

4.5. It is further submitted that compensation could be an additional remedy but not a substitute for restitutionary remedies. It is submitted that in case of medical admissions, even the restitutionary remedy of providing a seat in a subsequent year would lead to the loss of one full academic year of a meritorious candidate, which cannot be compensated in real terms. It is submitted that compensation for loss of year could be provided but denial of admissions to meritorious candidate, even after the cut-off date in exceptional circumstances, set out in para 32 in **Asha** (supra) cannot be compensated in monetary terms. It is further submitted that the value and the enforcement of a

fundamental right depends upon the nature of remedies that a court of justice can fashion. It is submitted that the power of Articles 32 and 226 ought not to be read in a constricted manner so as to limit the scope of remedies. If the courts do not have the power to fashion remedies, appropriate and adequate remedies, the enforcement of fundamental rights would be rendered meaningless. This is not just a principle of constitutional remedies but also a rule of equity.

4.6. It is further submitted by Learned Counsel appearing for the appellant that the compensation and constitutional torts are cases where restitution is impossible in real terms. It is submitted that the compensation cannot be the only remedy as observed by this Court in the case of **Jasmine Kaur** (supra).

5. Mr. Vikas Singh, Learned Counsel appearing on behalf of MCI has as such supported the decision of this Court in the case of **Jasmine Kaur** (supra). It is submitted that the time fixed for the admission by this Court, namely, 30th September has to be scrupulously followed so that they are not to be allowed to be derailed, under no circumstances. It is submitted that as per catena of decisions of this Court the time schedule relating to admissions to the professional courses should be strictly adhered to and shall not be restricted under any circumstances either by this Court or the Board and admissions should not be permitted. It is submitted that this Court had consistently held that no admission should be given in technical courses in mid-stream after the course has commenced, even if there are unfilled seats in the same year.

5.1. It is further submitted by Mr. Vikas Singh, Learned Counsel for the MCI that as held by this Court in **MCI vs. Madhu Singh, (2002) 7 SCC 258**, and **Neelu Arora vs. Union of India, (2003) 3 SCC 366**, even unfilled seats of one year cannot be telescoped into permissible seats of the subsequent year. It is submitted that the Court has held that there cannot be a carry forward of unfilled seats from one year to next year. This is because, it would in effect, increase the number of seats in the next year. It is submitted that in the aforesaid decision, this Court has opined a medical seat has life only in the year it falls and a vacancy cannot be carry forward in the next year. In support, he has heavily relied upon the decisions of this Court in **Faiza Chowdhary vs. State of J & K, (2012) 10 SCC 149**.

5.2 It is further submitted that this Court has consistently taken a stand that even in cases where the candidate before the Court is found meritorious; she cannot be accommodated in a subsequent year with a direction that seats be increased in the next year. It is submitted that number of seats cannot be over and above the number fixed by the MCI as per the regulations, and cannot be increased indiscriminately without regard to infrastructure. It is submitted that as held by this Court in the case of **Chhavi Mehrotra vs. Director General Health Services, (1994) 2 SCC 370**, the Courts cannot be generous in issuing directions which in effect amount to directing authorities to violate their own rules and regulations.

5.3. It is further submitted that however, with a view to see that a meritorious student is not made to suffer because of no fault of him/her and in rarest of rare cases or exceptional circumstances, while exercising the powers under Article 226 or Article 32 of the Constitution of India, the Court alone can grant the reliefs and may deviate from the normal rule.

5.4. It is further submitted by Mr. Vikas Singh, Learned Counsel appearing for MCI that however, it is in rarest of rare cases and in exceptional circumstances when it is found that for no fault on the part of the candidate and due to the gross negligence or inaction on the part of the concerned authority or for some unforeseeable reasons a meritorious candidate has been deprived of admission in medical course then in such circumstances only the Court may consider granting relief to the candidate, either by way of compensation or by directing that the candidate may be accommodated in the quota of sanctioned seats available for the next academic session. It is submitted that however only in cases where the Court is satisfied that monetary compensation will not be adequate to redress the injury suffered by the candidate, then and then only this direction to accommodate student in the next academic year may be passed. It is submitted that however while granting such a relief in the rarest of rare cases and in exceptional circumstances, a candidate must have approached the Court without any delay; candidate must be higher in the merit list than the last student admitted in the college and the candidate has complied with all the requirements and submitted each and every document on time as prescribed by the counselling authority and there is no delay attributable on the part of the student in this regard.

5.5. It is submitted to ascertain whether the candidate has approached the Court on time and to avoid mischievous persons from filing frivolous petitions the Court may consider the following criteria for determining the delay:

> (i) Where the candidate is challenging the validity of any provision in notification/Information Bulletin/ Prospectus issued by the concerned authority pertaining to admission in medicine course, then the candidate must have approached the Court before the commencement of the counselling process;
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> (ii) Where the candidate is challenging any eligibility criteria laid down in the notification/Information Bulletin /Prospectus for Common Counselling issued by the concerned authority, then the candidate must

have approached the Court before the commencement of the counselling process i.e. first round of counselling;

(iii) Where the candidate is challenging the first round of counselling process itself, then the candidate must have approached the Court immediately after the first round of counselling and before the commencement of second round of counselling;

(iv) Where the candidate is challenging the second round or mop up round of counselling process, then in that case student must approach the Court immediately thereafter but before the cut off/last date for completion of admission process.

5.6 It is further submitted by Mr. Vikas Singh, Learned Counsel appearing for MCI that in case all aforesaid pre-requisites are fulfilled by candidate and the Court is of the opinion that a case is made out having found rarest of rare case and exceptional circumstances and the Court is of the opinion that such a student can be accommodated in the next academic year, in that case also out of the total sanctioned intake of seats not more than two seats in an institution/college/University in a given academic year should be considered to be filled by the students of the preceding academic year who have been deprived of the MBBS students due to the negligence and fault of the authorities.

6. Heard Learned Counsel for the respective parties at length. The short but an important question of law posed for consideration of this Court is what relief a meritorious candidate is entitled to when it is found that a meritorious candidate is denied an admission arbitrary and illegally by the concerned authorities and the fault is not attributable to the candidate at all and the candidate has pursued his/her legal rights expeditiously and without delay, whether in such a situation awarding compensation only can be said to be just and an adequate relief? The issue which arises for consideration is whether having fulfilled the aforesaid prerequisites, the Court can grant relief and order admission even after the cut-off date for admission i.e. 30th September is over and whether the Court can grant admission beyond the intake either in the same year or in the next academic year?

6.1. In the case of **Asha** (supra) following questions were posed for consideration before the Court:

"(a) Is there any exception to the principle of strict adherence to the rule of merit for preference of courses and colleges regarding admission to such courses?

(b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?

(c) 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 admission in terms of rules and regulations?

(d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this Court governing the subject?"

After considering catena of decisions of this Court on the subject in Asha (Supra) this Court answered the aforesaid questions as under:

"38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

38.1 Question (a) : The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.

38.2 Question (b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

38.3. Questions (c) & (d): Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall

> award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment. Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course."

This Court also cautioned the courts for giving interim orders where admissions are matter of dispute before the Court. This Court observed as under:

> "39. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta case that the Courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction."

6.2. However, subsequently in the case of **Jasmine Kaur** (supra) a contrary view is taken by this Court, contrary to the law laid down by this Court in the case of **Asha** (supra). This Court has held that in such a situation grant of compensation is the only relief which can be granted and which a candidate is entitled to.

7. In view of the contradictory views and decisions in the case of **Asha** (supra) and in the case of Jasmine Kaur (Supra) the question which has been referred to the larger Bench is where a student, a meritorious candidate, for no fault of his/her is denied admission illegally and arbitrary and who has pursued her legal right expeditiously without delay, can be denied admission as a relief, because of cut-off date of 30th September is over and in such a situation the relief which can be given by the Court is to grant appropriate compensation only? Another question which is required to be considered is what relief can be granted by the Court in such a situation?.

7.1. The observations and the ultimate conclusion by this Court in the case of **Asha** (supra) and in the case of Jasmine Kaur (Supra) are required to be referred to and considered.

After considering catena of decisions of this Court on the point this Court in the case of **Asha** (supra) ultimately concluded in para 38 as under:

> "38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.
>
> 38.1 Question (a) : The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.
>
> 38.2 Question (b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.
>
> 38.3. Questions (c) & (d): Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment. Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by

itself a ground to permit them to continue with the course."

Thereafter in paragraph 39 this Court observed and directed as under:

"39. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta case that the Courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction."

7.2. However, in the subsequent decision in the case of **Jasmine Kaur** (supra) after considering the decision of this Court in the case of **Asha** (supra) ultimately in paragraph 33, it is observed and held as under:

"33.1. 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.

33.2 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.

33.3 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.

33.4. 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.

33.5. 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.

33.6. 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 et non dormientibus jura subveniunt*, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

33.7. 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.

33.8. 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 in the next academic year.

33.9. 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.

33.10. 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."

However, it is required to be noted that in the case before this Court in **Jasmine Kaur** (Supra) it was specifically found by this Court that there was a delay on the part of the candidate. It was specifically found that the conduct of the candidate 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 April, 2014 by which time the substantial part of the academic year has been crossed, disentitles the candidate any relief and the case would not fall in any extra-ordinary circumstances.

8. However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission illegally and who has pursued his/her legal rights expeditiously without delay is entitled to any relief of admission more particularly in the courses like MBBS the relief of compensation as held by this Court in **Asha** (Supra)?

The aforesaid question is required to be considered only to the cases where (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and (iv) candidate is found to be more meritorious then the last candidate who has been given admission.

8.1. At the outset, it is required to be noted that the question is with respect to a student/candidate seeking admission in the medical course more particularly in MBBS course. For a student/ candidate seeking admission in professional courses more particularly the medical course each year is very important and precious. Similarly, getting admission in medical course itself is very important in the life of a candidate/student and even a dream of man. In light of the above, the question for consideration is whether compensation for a meritorious candidate, who has been denied the admission illegally and arbitrary having approached the court in time can be said to be just and equitable relief?

8.2. The right to equal and fair treatment is a component of Article 14 of the Constitution. As held by this Court **Asha** (Supra) that a transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for no fault of a candidate/student violates principles of Article 14 is that the citizen injured must be put back to his/her original position. In that sense, the primary relief is restitutionary. As observed hereinabove, for a meritorious student seeking admission in medical course is very important in the life of student/ candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her fundamental rights. Compensation could be an additional remedy but not a substitute for restitutionary remedies. In case of medical admissions, even the restitutionary remedy of providing a seat in the subsequent year would lead to loss of one full academic year to a meritorious candidate, which cannot be compensated in real terms. Thus compensation for loss of year could be provided, but denial of admissions to a meritorious candidate cannot be compensated in monetary terms. Thus denial of admission in medical course to a meritorious candidate for no fault of his/her and though he/she has approached the Court in time and despite the same not granting any just and equitable relief would be denial of justice. Therefore, the question is what relief the Court can grant by which right to equal and fair treatment to a candidate are protected and at the same time neither there is injustice to other candidate/student and even compromising with the quality education. Therefore, a balance is required to be struck. However, at the same time it can safely be said that the view taken by this Court in **Jasmine Kaur** (Supra) that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of his/her. Therefore we are of the view that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in paragraph 33.3 in the case of Jasmine Kaur (Supra) are satisfied, the Court can grant exceptional relief to the candidate of granting admission even after the cut off date is over.

9. 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:

> (i) 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 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 restitutional 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.

10. In view of the above, the decision of this Court in the case of **Jasmine Kaur** (Supra) or any other decisions contrary to the above stand overruled. The decision of this Court in the case of **Asha** (Supra) is hereby affirmed to the aforesaid extent. The reference is answered accordingly.