

**(2010) 09 DEL CK 0350**

**Delhi High Court**

**Case No:** Writ Petition (C) No. 6300 of 2010 and CM No. 12499 of 2010

Dr. Arvind Kumar Pandey and  
Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Sept. 22, 2010

**Acts Referred:**

- Guru Gobind Singh Indraprastha University Act, 1998 - Section 16, 21, 28, 4(2)

**Hon'ble Judges:** Rajiv Sahai Endlaw, J

**Bench:** Single Bench

**Advocate:** Kamini Jaiswal, Abhimanue Shrestha and Divyesh Pratap Singh, for the Appellant; Madan Gera, for R-1, 3 and 4, Kamla Mahtho, Assistant Administrative Officer of R-3 and Mukul Talwar, for R-2, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Rajiv Sahai Endlaw, J.

The two petitioners have preferred this writ petition for a direction to the respondents to admit the petitioners in Super Specialty Medical Course in the field of Magister Chirurgiae in Cardio Thoracic Vascular Surgery (M.Ch. CTVS). The entrance test for admission to the Super Specialty Medical Courses for the academic session 2010-11 was conducted by the respondent No. 2 Guru Gobind Singh Indraprastha University and the results of the said test were declared on 15th June, 2010. The petitioners were on 11th and 14th position respectively in the merit list. The first counselling was scheduled for 30th June, 2010. The University displayed five seats available in the M.Ch. CTVS course i.e. four seats in respondent No. 4 Dr. Ram Manohar Lohia Hospital and one seat in respondent No. 3 Safdarjang Hospital & Vardhman Mahavir Medical College. The said five seats were filled up in the first counselling with the candidates till the position 6th in the merit list with the first merit holder opting out.

2. It is the case of the petitioners that the University announced 2<sup>nd</sup> round of counselling but not in the course of M.Ch. CTVS. However, the Ministry of Health & Family Welfare (respondent No. 1) on 21st July, 2010 announced two additional seats for M.Ch. CTVS course at Safdarjang Hospital & Vardhman Mahavir Medical College for the academic session 2010-11. It is the case of the petitioners that owing to the two additional seats having been announced by the Govt. of India, the University extended the date of 2<sup>nd</sup> round of counselling scheduled for 24th July, 2010 to 29th July, 2010 and on 29th July, 2010 prepared a waiting list of three candidates for the said course with the petitioners having position 2<sup>nd</sup> and 3<sup>rd</sup> respectively in the said waiting list.

3. One of the candidates who had joined M.Ch. CTVS course in Dr. Ram Manohar Lohia Hospital is stated to have vacated his seat. The petitioners filed this writ petition pleading that inspite of availability of three seats in M.Ch. CTVS course i.e. one vacated in Dr. Ram Manohar Lohia Hospital and two seats added by the Govt. of India in the Safdarjang Hospital & Vardhman Mahavir Medical College, sufficient to accommodate all three in waiting list prepared on 29th July, 2010, the respondents were not admitting the petitioners.

4. The writ petition came up first before this Court on 17th September, 2010 when the counsel for the respondent No. 2 University appearing on advance notice stated that the first candidate in the wait list category shall be considered against the vacant seat in Dr. Ram Manohar Lohia Hospital; with respect to the two additional seats in Safdarjang Hospital allowed by the Govt. of India, it was stated that Vardhman Mahavir Medical College attached to Safdarjang Hospital till then had not applied to the University for increase in the number of seats in the said course and unless such increase is applied for and affiliation with respect to the same granted, the University cannot admit students for the additional seats.

5. The Vardhman Mahavir Medical College was thus directed to file an affidavit explaining the steps taken for giving effect to the increase in seats sanctioned by the Govt. of India and the counsel for the University directed to seek instructions whether there were any more vacancies as orally contended by the counsel for the petitioners.

6. The affidavit as aforesaid has been filed on behalf of the Vardhman Mahavir Medical College and Safdarjang Hospital stating that the Govt. of India had vide letter/notification dated 21st July, 2010 increased two seats in M.Ch. CTVS course; that the Vardhman Mahavir Medical College had on 3<sup>rd</sup> August, 2010 informed the University of the said increase and vide another letter dated 9th August, 2010 requested the University to fill up the increased seats in September session itself; however the University vide its letter dated 31st August, 2010 had intimated the Vardhman Mahavir Medical College that it had already conducted the entrance test for the academic session 2010-11 and admissions had already been carried out and that for increase in the seats in the Super Specialty Medical Course, the University

will conduct an inspection in due course of time and the additional seats will be considered for academic session 2011-12.

7. The counsel for the petitioners invites attention to the Admission Brochure issued by the University for admission to Super Specialty Medical Courses for the academic session 2010-11. Clause-4 of the said Brochure gives the tentative number of seats available with a note that the seats intimated are provisional and are likely to change depending upon the approval of the Medical Council of India (MCI)/Govt. of India/University and the final seats will be notified before the commencement of counselling. It is contended that the two additional seats in Safdarjang Hospital were sanctioned before the 2nd round of counselling notified on 23rd July, 2010. It is next contended that recognizing the said increase only the University held the 2nd round of counselling for M.Ch. CTVS course and prepared a wait list on 29th July, 2010. Much emphasis is laid on the University having made each of the candidates in the wait list pay the fees. Attention is invited to Clause-15 of the Admission Brochure providing for the 2nd round of counselling. It is contended that had the University not intended to admit against the additional seats in Safdarjang Hospital, the 2nd round of counselling on 29th July, 2010 would not have been held and wait list would not have been prepared. Lastly, it is contended that there is no justification for the University taking a stand that it will not admit students against the two additional seats in the current academic session and would admit in the next academic session only. It is argued that the Govt. of India before increasing the seats must have already conducted the inspection and has increased the seats only after satisfying itself and University does not require inspection. It is argued that if there were no seats, why was the wait list prepared. It is contended that as per the judgment of the Apex Court in [Mridul Dhar \(Minor\) and Another Vs. Union of India \(UOI\) and Others](#), also, the admissions can be made till 30th September, 2010 and there is still time for admissions. It is urged that the seats should not be allowed to go waste. It is also informed that the University after filing of the writ petition issued a notification dated 18th September, 2010 with respect to one seat vacated in Dr. Ram Manohar Lohia Hospital. Such act of the University is urged to be contumacious.

8. The University though has not filed any counter affidavit but the counsel for the University has handed over a compilation of documents and considering the urgency expressed, the same has been allowed and the documents taken on record.

9. The counsel for the University has drawn attention to Clause-13.4 (v) of the Admission Brochure to show that the candidates admitted during the first round of counselling are not to be considered for 2nd round of counselling even if withdrawn their admissions by the due date for withdrawal. The counsel for the University controverts that the wait list with the names of the petitioners was prepared and the fee received from them in the 2nd round of counselling or owing to the increase in the number of seats. Attention is invited to Clause-16 of the Admission Brochure

which provides for the preparation of the wait list after the seats are filled up during the 2<sup>nd</sup> round of counselling. It is contended that the wait list on the basis whereof the petitioners claim relief was prepared in accordance with Clause-16 and as per which Clause the candidates in the wait list were required to deposit the fee. It is further urged that the petitioners in the writ petition also have admitted the said procedure but are now arguing to the contrary. From the compilation of documents handed over, it is shown that the Vardhman Mahavir Medical College had on 6<sup>th</sup> April, 2010 applied for affiliation for the current academic year for only one seat in M.Ch. CTVS course. From the report of the inspection conducted by the University for granting affiliation for that one seat, it is shown that the Associate Professor in the department of CTVS was not found and thus the report was of "Unit composition is incomplete. Associate Professor is to be appointed urgently". It is contended that thus Vardhman Mahavir Medical College does not fulfill the norms of affiliation for even one seat in M.Ch. CTVS course but on the assurance that the Associate Professor shall be appointed urgently, the Board of Affiliation of the University in its meeting held on 20<sup>th</sup> May, 2010 granted "provisional affiliation" to the Vardhman Mahavir Medical College for one seat in M.Ch. CTVS course for the academic session 2010 -11. It is thus contended that when the affiliation even for one seat is "provisional" and norms even for that were not found satisfactory, the University cannot be expected to grant affiliation for the two additional seats. It is stated that after sanction of additional seats and upon receipt of letters aforesaid from the Vardhman Mahavir Medical College, the Board of Affiliation of the University again met on 18<sup>th</sup> August, 2010 and decided against affiliation for the aforesaid reasons and also for the reason of both rounds of counselling having been completed. It is further pointed out from the notice issued of the 2<sup>nd</sup> round of counselling that since there were no vacancies in that course, no 2<sup>nd</sup> round of counselling for that course was scheduled and the petitioners had appeared only pursuant to notice for preparation of wait list in accordance with Clause-16 of the Admission Brochure. It is further informed that the wait list is prepared to prevent the seats from going waste. It is lastly contended that at this stage seats cannot be permitted to be increased also for the reason that those who have taken admission in the first round of counselling and who as per the admission procedure are now ineligible cannot be deprived of opting for the additional seats.

10. The counsel for the petitioners in rejoinder reiterates her contention.

11. Affiliation is not an empty exercise. The University was established under the Guru Gobind Singh Indraprastha University Act, 1998 enacted by the Legislative Assembly of NCT of Delhi. Section 4(2) of the said Act provides that no College or Institution situated within the jurisdiction of the University (i.e. the National Capital Region) shall be "compulsorily affiliated" to the University and "affiliation shall be granted by the University" only to such College or Institution as may agree to accept the Statutes and Ordinances of the University. Section 16 of the Act constitutes the "Board of Affiliation" as an authority of the University. Section 21 makes the said

Board of Affiliation responsible for admitting Colleges and Institutions to privileges of the University. Section 28 empowers the authorities of the University (and of which Board of Affiliation is one) to make Regulations for conduct of their business. Statute 24 of the University relates to the conditions under which Colleges & Institutions may be admitted to the privileges of the University. One of such conditions is that it has been granted a No Objection Certificate by the concerned State Government and recognition by the appropriate statutory authority wherever applicable, for the subjects and courses of study for which affiliation is sought. Other conditions relate inter alia to i) suitable and adequate physical facilities in terms of space, accommodation, laboratories, workshops, equipments, library, furniture, infrastructural facilities etc; ii) existence of teachers and other employees having qualification and eligibility criteria and in such numbers as per norms laid down by the University; iii) the College / Institution agreeing not to admit students in excess of number permitted by the University, etc. Statute 24 further provides that it shall be open to the University to reject a request for affiliation or to grant it in whole or in part mentioning subjects and courses of study and number of students to be admitted. The University is also required to inspect the College / Institution seeking affiliation and empowered to suspend and withdraw affiliation.

12. It will thus be seen that the Act under which the University has been established does not require the University to grant affiliation to College / Institution or courses recognized by statutory authorities as Medical Council of India (MCI) on whose recommendation the Government grants permission, automatically. Rather, wherever such recognition is applicable, the same is but one of the conditions for affiliation.

13. The contention of the counsel for the petitioners that the University need not conduct inspection owing to the Govt. of India having satisfied itself cannot be accepted and more so when the affiliation granted earlier for existing seat was also provisional.

14. Though the counsel for petitioners has not argued that it is mandatory for University to grant affiliation but I may notice that the Supreme Court in [State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others](#), and in [Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another](#), even though holding that the provisions of the University Act regarding affiliation to the extent they are contrary to the Central Act (in that case All India Council for Teacher Education Act, 1987) will be deemed to be unenforceable, nevertheless did not take away the power of the University to affiliate and both the cases were disposed of with the direction to the University to consider the application for affiliation. On the same parity of reasoning, I find that the affiliation by the University cannot be given a go by merely because the Govt. of India on recommendation of the MCI has increased the number of seats. The University still

retains its rights to in accordance with its Act, Statutes and Regulations consider whether to affiliate or not, though on reasons not inconsistent with the Indian Medical Council Act, 1956. I have recently dealt with the said aspect in detail in W.P.(C) No. 4771/2010 titled Gitarattan Institute of Advanced Studies and Training v. Director Higher Education decided on 13th August, 2010 but since the counsel for petitioners has not argued on this aspect, need is not felt to reiterate the reasons stated therein.

15. I find that the principle of the aforesaid two judgments was recently applied to Medical Colleges also in Mata Gujri Memorial Medical College v. State of Bihar (2009) 16 SCC 309. However in that case the University was withholding affiliation only for the reason of absence of approval by the State Govt. as required under the University Regulations. The Supreme Court held the approval of the State Govt. to be not necessary and hence directed the University to grant affiliation. However in the present case, the University has found the Vardhman Mahavir Medical College to be not equipped and the affiliation for existing seat is also provisional. The University is within its right to refuse affiliation and cannot in the circumstances be directed to admit petitioners even without affiliation for additional seats. The Supreme Court in [Laxmi Sharma and Others Vs. V.C., Chhatrapati Sahuji Maharaj University and Others](#), held that the Court cannot direct the University to grant affiliation and can only request University to consider grant of such affiliation. However in the present case the matter of affiliation for additional seats having been considered by the Board of Affiliation of the University on 18th August, 2010 and no error being found in the decision, need is not felt to direct the University to re-consider the affiliation.

16. I am also unable to agree with the contention of the counsel for the petitioners that the University by any of its actions had agreed to make admissions for the additional seats. The documents on record belie the contention of the petitioners that the 2nd round of counselling was held for the M.Ch. CTVS course and demonstrate that the wait list was prepared in accordance with the Admission Brochure. The petitioners now appear to be taking advantage of the preparation of the wait list in conjunction with the increase in number of seats.

17. While it is correct that seats especially in such courses ought not to be permitted to be wasted but in fact there is no seat till affiliation by the University with respect thereto is granted. The argument is therefore defective. Moreover, the said argument has to be balanced with the requirement of admitting only such number of students who can be properly given training and education. From the documents handed over by the counsel for the University, I am satisfied that the Vardhman Mahavir Medical College as of today is not equipped to admit the additional students in M.Ch. CTVS course. Such Super Specialty Medical Course in the field of medicine cannot be permitted in a half baked ill-equipped Institute/College.

The writ petition is therefore dismissed. No order as to costs.

Copy of this order be given Dasti under the signature of the Court Master.