Guru Gobind Singh Indraprastha University
Sec 16 C Dwarka New Delhi 110078

GGSIPU/Admissions/2017/ 19945
April 13, 2017

Schedule for Common Counselling for admission in MD/MS/Diploma/ MDS/MD (Community Health Administration) /Diploma in Health Education held under the supervision of the Department of Health & Family Welfare, Govt of NCT of Delhi for admissions in Guru Gobind Singh Indraprastha University and University of Delhi – to be conducted by Guru Gobind Singh Indraprastha University

This is in continuation of the University's notification No. GGSIPU/Admissions/2017/ 19911 dated 12/04/2017 on the above subject.

As previously mentioned in the aforesaid Schedule, the Writ Petition (C) 2610/2017 titled "Dr Deeksha Kalra & Ors Vs GGSIPU" listed on 13/04/2017 in the Hon'ble High Court of Delhi. Hon'ble High Court of Delhi, New Delhi has passed an order in the said writ petition on 13/04/2017. Extract from the Judgment are mentioned here below:-

> *"In view of my discussion above, the petitioners have not made any prima facie case for grant of the relief 'D' which is in the nature of an interim relief. The same is rejected."*

(The copy of the Order dated 13th April 2017 in Writ Petition (C) 2610/2017 is enclosed herewith, for information).

Accordingly it is notified that the Common Counselling for admission shall be carried out as per the notified procedure and schedule.

All the stake holders are requested to please visit the University of Delhi Faculty of Medical Sciences website; website of GGSIP University and website of Hamdard Institute of Medical Sciences & Research Jamia Hamdard for further updates.

Dr Nitin Malik
Joint Registrar (Admissions)

Copy to :-
1. Special Secretary (H&FW), Govt of NCT of Delhi.
2. Controller of Examinations, GGSIPU
3. Controller of Finance, GGSIPU
4. AR to Vice Chancellor, GGSIPU for information of the Hon'ble Vice Chancellor
5. SO to Pro Vice Chancellor, GGSIPU for information of the Pro Vice Chancellor
6. AR to Registrar, GGSIPU for information of the Registrar
7. Joint Registrar (Medical), Faculty of Medical Sciences, University of Delhi
8. Registrar, Hamdard Institute of Medical Sciences & Research Jamia Hamdard
9. Guard File.

Ajay Kumar Arora
Assistant Registrar (Admissions)

Forwarded to Incharge (Acad) for information and n/a
Kalra 13/4/2017

Incharge (Acad)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th April, 2017

\+ W.P.(C) 2610/2017, CM No. 12734/2017

DR. DEEKSHA KALRA & ORS ..... Petitioners
Through: Mr. Angad Mehta and Mr. Dhrupad Das, Advs.

Versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ORS ..... Respondents
Through: Mr. Mukul Rohtagi, Sr.Adv. with Ms. Anita Sahani and Ms. Leela Suman, Advs. for R1.
Mr. Sladan Farasat and Mr. Ahmed Said, Advs. for GNCTD with Mr. Kapil Agnihotri, Special Assistant Department of Health and Family Welfare.
Mr. T. Singhdev, Ms.Bhakthansagi, Mr. Tarun Verma and Ms. Puja Saikia, Advs. for R5.
Mr. Krishnan Venugopal, Sr. Adv. with Mr. Akash Johri, Mr. Shivendra Singh, Ms. Deepanshi Ishar, Advs. For impleaded respondent nos. 7 to 110.

HIGH COURT OF DELHI
सत्यमेव जयते
Diary No. 848 Dt. 13/4/2017
Legal Branch
G.G.S.I.P. University

CORAM:-
HON'BLE MR JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. By this order, I shall decide prayer 'D' of the writ petition, which is a prayer for interim relief and which reads as under:-

"D. Pending the disposal of the present petition, pass ex-parte ad-

interim order restraining the respondent Universities from holding institutional counselling for Post Graduate Medical seats."

2. Briefly stated, the writ petition has been filed by the petitioners inter-alia challenging Article 2.1.1 of the University of Delhi (respondent No.2), Faculty of Medical Sciences Bulletin Information and Article 2.5 (6) and Article 2.5.3 (1) of the Guru Gobind Singh Indraprastha University (respondent No.1) Admission Brochure for the academic year 2017-18 and/or any other eligibility criteria laid down by the said respondents in their admission brochure/bulletin of information, which provides for institutional preference [illegible] respectively.

3. I may state here, the prayer [illegible] made in the writ petition the petitioners have sought a combined counselling through the designated authority for admission to all PG/Medical Courses in terms of Regulation 9A of the Medical Council of India Post Graduate Regulations, 2000. This aspect was also urged by Mr. Arun Kathpalia, during his submissions on April 10, 2017.

4. The said prayer has been satisfied inasmuch as during the hearing on April 10, 2017 the learned counsel appearing for the GNCTD has conveyed to the Court that the State Government has decided to hold a common counselling for admission to Post Graduate Medical Courses under the overall superintendence, direction and control of the State

Government in terms of Regulation 9A of the Post Graduate Medical Education Regulations, 2000 on April 14th and 15th, 2017.

5. It is the submission of Mr. Angad Mehta, that Regulation 9A of the Post Graduate Medical Education Regulation, 2000 takes within its ambit pooling of seats in the respondent Universities. According to him, the word *"Common Counselling"* in Regulation 9A has to include pooling of students without any institutional preference and this necessarily be understood in the background of the fact that the admission process is on the basis of NEET-PG. According to him, of the students who give the NEET-PG two lists are prepared (1) an India Quota and (2) a State Quota. Both these lists are prepared from NEET-PG qualified students, who form a common pool of students. While there is no issue for those who gain admission through All India Quota. The issue arises when admissions are sought through the State Quota. So different yardsticks/eligibility criteria cannot be applied considering the admissions under the All India Quota and State Quota. He would rely upon the Information Brochure for registration, counselling and preference form filling and admission process issued by the State of Maharashtra for Government Medical Colleges vide Article 1.1 (II) to contend, the State Quota seats for the State of Maharashtra takes within its fold seats from

all Medical Colleges and he also refers to Article 7.1 which prescribes for availability of seats for admission to medical courses from institutions located in Maharashtra. In other words, the only requirement for PG medical seats is, the candidate must have passed his/her MBBS examination from the College situated in Maharashtra. According to him, online combined counselling for Government and Unaided Minority Institution is also mandated. He also relies upon the Information Bulletin for admission to PG Degree/Diploma Medical and Dental Courses for the academic year prescribed by the Maharashtra Examinations Authority to contend that the same requires a candidate to have completed his/her MBBS from Colleges recognized by Medical Council of India and located in Karnataka State. Further the religious and linguistic minorities are also taken into a common pool for admission. He further relies on the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006 to contend that the State of Assam much like the NCT of Delhi, which has a Central University (Assam University) and the State University (Gauhati University) has Rule 4(5) which provides for an across the Board Constitutional Reservation irrespective of whether the University is State or Central University. Similarly, he refers to the Brochure issued by the Jammu & Kashmir to contend that the allocation

of seats is to take place only on the basis of NEET-PG read with State Reservation Policy. Further, the eligibility criteria prescribed is a degree from University of Jammu/University of Kashmir. Similarly, he states, in the State of Uttarakhand, the eligibility criteria prescribed, is those candidates who have passed their MBBS from a medical college situated in Uttarakhand and recognized by the MCI. He also state that the Government of Gujarat also to maintain uniformity of eligibility and sanctity of inter-se merit based on NEET norms, necessary requires admissions irrespective of the University from which the student has completed his MBBS. Similar is the submission with regard to the State of Madhya Pradesh.

6. That apart, he contest the stand of the respondents that pooling of seats is impermissible when the respondent No.1 is a State University whereas the respondent No.2 is a Central University by stating that the same is of no consequence, inasmuch as both the Universities are geographically located in the NCT of Delhi catering to a population which has no drastic socio cultural difference. He also states, that as against 150 seats at the Under Graduate level in the Guru Gobind Singh Indraprastha University, respondent No.1 there are about 209 seats at the Post Graduate level which means if institutional preference is given,

many seats would remain unfilled/go waste. He would also state, that the institutional preference was permissible earlier when respondent No.2 University was the only University in Delhi. Therefore it did not matter then as institutional preference/reservation was being followed because State quota only meant Delhi University seats. However, because of the change in circumstance the term State Quota must and can only be understood to mean students graduating from within a particular geographical region in the State. He would reiterate that in view of the NEET, the Central Government has established standards for admissions and merit and it is no longer open to the respondent Universities to establish their own standards in supersession of the NEET standards. To read institutional preference into State Quota would violate the very meaning of the phrase. He would refer to the judgment of the Supreme Court in the case of ***D.N. Chanchala v. State of Mysore (1971) 2 SCC 293*** to contend that the judgment of the Supreme Court upholding the University's right to institutional preference is predicated on certain issues that existed on that date, inasmuch as the standards of examinations differed from University to University; owing to such different standards between Universities no comparative merit could be established inter-se different candidates passing out from different

institutions and thus candidates passing from different Universities through different qualifying examinations formed different classes themselves. Whereas in the present context, none of these consideration exist in view of NEET-PG. He also states, that the reliance placed by the respondents on ***Saurabh Chaudri and others v. UOI and ors 2003 (11) SCC 146***, wherein the right of the Universities to provide institutional preference was upheld would not be applicable in the present day scenario. He states, that in terms of the judgment of the Supreme Court in the case of ***Modern Dental College and Research Centre and ors v. State of Madhya Pradesh and others (2) SCC 353***, the merit has to be the basis for making admission. In the end, it is his submission, common counselling has to be given its true and intending effect, pooling of students of the respondent Universities must take place, otherwise it would amount to negating Regulation 9A of the Regulations and in violation of Article 14 of the Constitution of India.

7. On the other hand, Mr. T. Singhdev, learned counsel for the Medical Council of India, the respondent No.5 would submit that the institution reservation is permissible under the scheme of Regulation 9 and Regulation 9A of the Post Graduate Medical Education Regulation, 2000. In this regard, he would submit that the issue of institutional

preference was considered by the Supreme Court for the first time in the case of ***Dr. Pradeep Jain and ors v. Union of India 1984 (3) SCC 654*** wherein the Supreme Court has held that it was constitutionally permissible for the State to have reservation of seats on the basis of institutional preference in Post Graduate medical courses for students who have passed MBBS course from the same University. However, such institutional reservation should not exceed 50% and the percentage of reservation of seats may be revised from time to time depending upon the prevailing situations. He has taken me through various paragraphs of the judgment in support of his contentions. Similarly, he would state that in the case of ***AIIMS Students Union vs. AIIMS and others (2002) 1 SCC 428***, the Supreme Court has held that a reasonable percentage of seats may be reserved for students in Post Graduate medical courses on the basis of institutional preference. According to him, the Supreme Court held the reservation of seats on the basis of institutional preference should not violate the principle of merit as well as equality of opportunity in matters of education. He has also referred to the judgment of ***Magan Mehrotra and ors v UOI and ors (2003) 11 SCC 186*** wherein the Supreme Court has reiterated the principles laid down in ***Dr.Pradeep Jain (supra),*** that it is permissible to have reservation of seats at Post Graduate

level on the basis of institutional preference for students who have completed their MBBS course from the same College/University. He also refers to the judgment of Supreme Court in ***Saurabh Chaudri and ors v. Union of India and ors 2003 (11) SCC 146***, wherein the Constitution Bench of the Supreme Court examined in detail the constitutional validity of institutional reservation. He states, the validity of institutional reservation was upheld by the Supreme Court by observing that the institutional reservation does not violate the principles enshrined under Article 14 of the Constitution. He also states that the Supreme Court in the said case has approved the scheme laid down by it in ***Dr.Pradeep Jain and ors (supra)*** fixing 50% as the outer limit for institutional reservation. He has drawn my attention to various paragraphs of the judgment in support of his submission. He also draws my attention to a recent writ petition filed before the Supreme Court being ***W.P.(C) No.111/2017 Dr. Pooja Meena and ors vs. Union of India and ors*** wherein the University of Delhi and the Guru Gobind Singh Indraprastha University were also parties and wherein the contention and the challenge of the petitioners in the writ petition was, to an admission notification dated October 18, 2016 inviting applications from Delhi University Medical Graduates and interns for making

admission to MDS Course-2017, whereby the entire State Quota seats have been made available only for Graduate/students of Delhi University and thereby the petitioners therein, who have qualifications from the Guru Gobind Singh Indraprastha University and Jamia Millia Islamia are being illegally, arbitrarily and unconstitutionally denied right of consideration under Delhi State Quota. According to him, the issue before the Supreme Court was precisely the same as has been raised by the petitioners in the present writ petition. He states the Supreme Court has dismissed the said writ petition.

8. Mr. Krishnan Venugopal, learned Senior Counsel appearing for the impleaded respondents would submit that the Supreme Court right from the case of ***Dr. Jagdish Saran v. Union of India (1980) 2 SCC 768*** till ***Saurabh Chaudri (supra)*** has not only recognized but unequivocally upheld reservation in Post Graduate medical seats based solely on institutional preference. According to him, the institutional preference/ reservation is purely based on institutional continuity and those who have graduated from medical colleges run by/affiliated with a particular University are favoured for admission to the Post Graduate classes in the Colleges under that University.

9. According to him, the basis for institutional preference is based on

a reasonable classification and bears a just relationship to the object of the education provided in Post Graduate classes. He has drawn my attention to various paragraphs of the judgment of the Supreme Court in the case of ***Dr.Pradeep Jain and ors (supra)*** and ***Saurabh Chaudri (supra)*** in support of his contention. According to him, the institutional preference has to be held to be valid and reasonable classification for the purpose of institutional continuity in a University only for Post Graduate medical college seats.

10. It is also his submission that Regulation 9A of the Post Graduate Medical Education Regulations, 2000 does not purport to impinge upon the fundamental right of the minority institution to admit the students of their choice or affect reservation by way of institutional preference given by Universities. Common counselling and reservation by way of institutional preference can co-exist. In this regard, he refers to the judgment in the case of ***P.A Inamdar and ors v. State of Maharashtra and others (2005) 6 SCC 537.***

11. It is also his submission that merger of seats of University of Delhi and Guru Gobind Singh Indraprastha University is impractical as both follow different lists for reserved categories (SC/ST and OBC) and this Court in exercise of its power under Article 226 of the Constitution

cannot merge the seats reserved by way of institutional preference of the two Universities one being Central University and other a State University as that would amount to encroaching the functions assigned to legislative bodies under the Constitution. Without conceding the aforesaid submissions, he states that the Regulation 9A vide notification March 10, 2017 of the Medical Council of India necessarily imply merger of the PG medical seats of the University of Delhi and Guru Gobind Singh Indraprastha University, the same ought to be made prospectively and should not be applied in the ongoing academic year in view of the order of the Constitution Bench in ***Saurabh Chaudri v. Union of India 2004 (5) SCC 618.***

12. Mr. Mukul Talwar, learned Senior Counsel appearing for the Guru Gobind Singh Indraprastha University respondent No.1 would also submit that the prayer in the petition is self defeating inasmuch as institutional quota is only a quota, not reservation permitted by the Supreme Court in ***Dr. Pradeep Jain case (supra)***. He also refer to the judgment of ***Saurabh Chaudri (supra)*** in-extenso.

13. According to him, the plea of the petitioners that the judgments relied upon in the case of ***Dr. Pradeep Jain (supra)*** and ***Saurabh Chaudri (supra)*** are Pre NEET regime and after the incorporation of the

Regulation 9A the institutional quota has been done away with is self defeating, in view of the said judgments and the same is presumptive inasmuch as the common counselling concept does not do away with institutional quota. Had it been the intent, the same would have been spelt out clearly in the said Regulation i.e 9A, especially in view of the judgment of the Constitution Bench. According to him, the intent and purpose of Regulation 9A is only to deal with conduct of counselling by the State and the State retaining with itself the overall superintendence, direction and control. He also states that the other criteria with regard to reservation and number of seats in the All India Quota and respective State Quota is also mentioned in the said Regulation. He also states that the seats of two different categories of Universities can be clubbed together only if the reservation policy applicable to them and the OBC list/Scheduled Caste/Scheduled Tribe list which they have to follow are common. In no manner, Regulation 9A has diluted or changed in any manner the institutional quota. He would also refer to the writ petition filed by ***Dr. Pooja Meena and ors*** before the Supreme Court and the dismissal of the same and the fact that the writ petition relates to the course of MDS (Dental Medical) and not medical would be of no consequence as the Post Graduate Medical Education Regulation are for

all branches of medicine including dental and the core issue in the case of ***Dr. Pooja Meena and ors*** is also of institutional quota in PGME alone.

14. Mr. Mohinder J.S. Rupal, learned counsel appearing for the Delhi University respondent No.2 would submit that the clause 2.1.1 which stipulates the candidate must have passed MBBS examination (for MD/MS/Diploma Course) and BDS examination (for MDS Course) from the University of Delhi has been in existence for a long time so as to give institutional preference in allocation of seats in PG admissions to its Under Graduate students. He also relies upon the judgment of the Supreme Court in ***Dr. Pradeep Jain (supra), Magan Mehrotra (supra), Saurabh Chaudri (supra)***. He also states that Delhi University being a Central University established by the Centre, the reservation of a State/UT do not apply to University of Delhi. He would refer to a judgment of this Court in ***W.P.(C) No. 5512/2013 Guru Gobind Singh Indraprashta University v. Dr. Smit Rajpoot*** to contend that no pooling of seats of different Universities can be allowed. He also states, the issue has attained finality after the dismissal of the W.P.(C) No. 111/2017 in the case of ***Dr. Pooja Meena and ors v. Union of India*** by the Supreme Court. Even otherwise, it is his submission that this writ petition is highly belated and the counselling is required to be completed latest by April 15,

2017 as directed by the Supreme Court in the matter of ***Dr. Ashish Ranjan v. Union of India***. He seeks the dismissal of the writ petition.

15. Having heard the learned counsel for the parties, the question need to be decided is, whether the petitioners are entitled to interim relief as prayed for, which has been reflected above. Surely, for such a purpose it has to be seen whether there is a prima facie case in favour of the petitioners. The plea of Mr. Angad Mehta in that regard that post NEET regime, the Central Government has established the standards of admissions and merit and it is no longer open for the respondent Universities to establish their own standards in supersession of NEET standards. The said submission looks appealing on a first blush, but the position of law laid down by the Supreme Court in the case of ***Dr. Pradeep Jain (supra)*** can not be overlooked, wherein in para 22, 23 and 24, the Supreme Court has held as under:

> *"22. So much for admission to the M.B.B.S. course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to post graduate courses, such as, M.D., M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by*

Krishna Iyer, J. in Jagdish Saran's case, and we wholly endorse what he has said:

> *"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality here the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph. D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expended upon as important loss their potency. Excellence, measured by matching excellence, has merit-value and cannot be diluted much without grave risk.*

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs no disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the

summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, unrelenting strictness in selecting the best may be inoperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

*

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical

illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasised that preferential treatment, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomeriang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

"Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all India basis and there should be no restriction regarding domicile in the State/UT in which the institution is located." So also in the

policy statement filed by the leaned Attorney General, the Government of India has categorically expressed the view that:

> *"So far as admissions to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."*

We are therefore of the view that so far as admissions to post-graduate courses such as MS., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to border considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also

be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.

23. What we have said above in regard to admissions to the M.B.B.S. and post-graduate courses must apply equally in relation to admissions to the B.D.S. and M.D.S. courses. So far as admissions to the B.D.S. and M.D.S. courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical Council in regard to admissions to M.B.B.S. and post- graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admissions to BDS and MDS courses are concerned.

24. The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all he