

**IN THE COURT OF HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Writ Petition No. 569 of 2003

Miss. Aasma Nalwa,
D/o Dr. J.P.S. Nalwa,
Aged about 19 years,
R/o House No. 130,
Ramnagar, Roorkee,
Distt. Haridwar

.....Petitioner

Versus

Chairman, Examination Committee,
Himalayan Institute of Medical Sciences,
Swami Ramnagar, Post Office, Doiwala,
District Dehradun and others

.....Respondents

Mr. Sharad Sharma, Advocate, for the petitioner.
Sri N.B. Tiwari, learned C.S.C.
Sri V.K.Kohli, Adocate for the Himalayan Institute of Medical Sciences.

**Coram: Hon. S.H. Kapadia, C.J.
 Hon. Irshad Hussain,J.**

Date: 30.08.2003

Oral Judgment (Hon. S.H. Kapadia, C.J.)

Rule.

Respondent waive service. By consent, the writ petition taken up for final hearing.

Himalayan Institute of Medical Sciences issued an advertisement (Annexure 1) stating that Common Entrance Test for admission to M.B.B.S. for the year 2003-04 would be held on 06-07-2003 in accordance with the orders of the Superme Court in India in T.M.A. Pai Foundation and others Vs. State of Karnataka and others decided on 31.10.2002. This advertisement refers to Himalayan Institute of Medical Sciences inviting applications for admission to M.B.B.S. Course.

Pursuant to this advertisement, the petitioner made an application. As per the advertisement, the last date for submission of application form was 21.06.2003. The date of entrance examination was 6.7.2003.

By the letter (Annexure6) dated 31.5.2003, Himalayan Institute of Medical Sciences informed the petitioner that the schedule for Common Entrance Examination has been postponed indefinitely. Her application was returned.

Thereafter, vide (Annexure 7), Government of Uttaranchal published a notification for admission to M.B.B.S. As per this advertisement, the last date of submitting the application form was 10.6.2003 and the date of examination was 13.7.2003. This advertisement was missed out by the petitioner. She was under the impression that the advertisement given by the Himalayan Institute of Medical Sciences was the proper advertisement. She thought that the exams notified thereunder has been postponed. She moved the Court. The earlier Bench of this Court directed the petitioner to be provisionally allowed to submit her application for entrance examination to be held on 13.07.2003 mentioned in Annexure 7. She appeared in the examination. She has secured 147 marks out of 200. Today, when the matter came up for admission, it was argued that the Himalayan Institute of Medical Sciences could not have issued that advertisement (Annexure1); that the Government of Uttaranchal was the only authority to issue the advertisement (Annexure 7); that there was no question of preponement ; that the petitioner has never applied pursuant to Annexure 7 and, therefore, no relief should be granted to the petitioner.

Although, we find merit in the case of the Government, we are of the view that the student should be given an opportunity of counseling. On the relevant date, the Himalayan Institute of Medical Science has issued an advertisement on the basis of applicability of the judgment of the Supreme Court. Subsequently, the Central Government issued directions and under those directions Government of Uttaranchal was the sole authority to hold the Central entrance test. For this confusion, we can not find fault with the petitioner. Hence, the following order is passed.

ORDER

Respondent no.4- State of Uttaranchal, will allow the petitioner to undergo counseling on the basis of the marks secured by her in the examination in which she has appeared pursuant to the orders passed by the earlier Bench of this Court. This order will not be cited as a precedent in any other matter.

The writ petition is disposed of.

(Irshad Hussain,J.)

(S.H. Kapadia, C.J.)

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