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

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*Judgement reserved on 19.12.2019  
Judgement pronounced on 27.12.2019*

+ **W.P.(C) 10905/2019**

MALLIKA MALHOTRA & ORS. .... Petitioners  
versus

GURU GOBIND SINGH INDRAAPRASTHA  
UNIVERSITY & ORS. .... Respondent

+ **W.P.(C) 12519/2019**

VALENCE KUNDRA .... Petitioner  
versus

GURU GOBIND SINGH INDRAAPRASTHA  
UNIVERSITY & Ors. .... Respondent

+ **W.P.(C) 10689/2019**

SNEHIL SHREY (MINOR) THROUGH. HIS LEGAL GUARDIAN/  
FATHER SH. PRAKASH KUMAR PANDEY .... Petitioner  
versus

THE JOINT REGISTRAR GURU GOVIND SINGH  
INDRAAPRATHA UNIVERSITY AND ORS. .... Respondents

+ **W.P.(C) 12650/2019**

AAYUSH SHARMA .... Petitioner  
versus

GURU GOBIND SINGH INDRAAPRASTHA  
UNIVERSITY AND ORS. .... Respondents

+ **W.P.(C) 12708/2019**

VIVEK DUBEY .... Petitioner  
versus

GURU GOBIND SINGH INDRAAPRASTHA UNIVERSITY  
THROUGH ITS REGISTRAR & ORS .... Respondents

+ **W.P.(C) 12111/2019**

BHARAT KUMAR AND ORS. .... Petitioners

versus  
GURU GOBIND SINGH INDRAPIRASTHA  
UNIVERSITY AND ORS. .... Respondents

- + **W.P.(C) 12112/2019, CM Nos.49628/2019 & 52956/2019**  
ADITYA AGGARWAL .... Petitioner  
versus  
GURU GOBIND SINGH INDRAPIRASTHA  
UNIVERSITY AND ORS. .... Respondents
- + **W.P.(C) 12114/2019**  
MONU SHARMA .... Petitioner  
versus  
GURU GOBIND SINGH INDRAPIRASTHA  
UNIVERSITY AND ORS. .... Respondents
- + **W.P.(C) 12151/2019**  
DIVIJ AND ORS. .... Petitioners  
versus  
GURU GOBIND SINGH INDRAPIRASTHA  
UNIVERSITY AND ORS. .... Respondents

**Counsel for the petitioners:**

Mr. Vivek B. Saharya, Adv.; Mr. N.K. Sinha, Adv.; Ms. Amrita Sharma with Mr. Shubhankar and Mr. Bharat Monga, Advs.; & Mr. Rama Shankar, Advocate.

**Counsel for the respondents:**

Ms. Ekta Sikri with Mr. Jasbir Bidhuri and Mr. Arun Sinwal, Advs. for GGSIPU; Ms. Anita Sahani, Adv. for R-1/GGSIPU in W.P.(C) No.12112/2019; Mr. Jasmeet Singh and Ms. Tejaswani, Advs. for R-8 in W.P.(C) No.12111/2019; Mr. Brij Shankar, Adv. for R-11 in W.P.(C) No.12111/2019 & 12151/2019; Mr. Somendra Kumar, Adv. for R-5 in W.P.(C) 12111/2019; Mr. Prateek Gupta, Adv. for R-6 in W.P.(C) No.12111/2019; Ms. Warisha Farasat and Ms. Hafsa Khan, Advs. for GNCTD; Mr. Ankit Jain with Mr. Abhay Pratap Singh, Advs. for R-2 in

W.P.(C) No.12519/2019; Mr. Deepak Vohra, Adv. for NAIT; Mr. S. Suri, Adv. in W.P.(C) No.10689/2019; Mr. Mukesh Pushpam, Adv. for R-2 in W.P.(C) No.12151/2019; Mr. Kunal Madan, Adv. for R-2 in W.P.(C) No.10689/2019; Mr. Shyam Babu, Adv. for JIMS in W.P.(C) No.10689/2019; Mr. Prasenjit Keswani, Adv. For BVCE in W.P.(C) 10905/2019.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**JUSTICE RAJIV SHAKDHER**

**TABLE OF CONTENTS**

Backdrop: -	4
Valence Kundra [W.P.(C) No.12519/2019]	5
Aayush Sharma [W.P.(C) No.12650/2019]	6
Vivek Dubey [W.P.(C) No.12708/2019]	7
Snehil Shrey [W.P.(C) No.10689/2019]	9
Aditya Aggarwal [W.P.(C) No.12112/2019]	10
Monu Sharma [W.P.(C) No.12114/2019]	11
Petitioners in W.P.(C) 12111/2019, 12151/2019 & 10905/2019	12
CHART OF THE PETITIONERS ETCHING OUT ALL MATERIAL PARTICULARS: -	12
The University's stand <i>qua</i> the notifications issued in connection with spot counselling: -	15
Submissions of Counsel: -	22
Analysis and Reasons: -	43
I. Maintainability: -	43
II. Can non-payment of balance academic fee be equated with non-reporting?	60
Short timelines led to inequitable results: -	76
Admission of 20 candidates by the University after 16.08.2019: -	78
III. Recommendations of the Public Grievances Commission (PGC): -	80
IV. The cut-off date argument: -	81
V. The impact of letters addressed to the University by 13 out of the 23 petitioners:	84
Conclusion: -	91
Relief: -	93

**Preface: -**

1. These are nine writ petitions involving 23 petitioners who are seeking admissions in various colleges/institutes which are run under the aegis of respondent no.1 i.e. Guru Gobind Singh Indraprastha University (hereafter

referred to as “University”).

2. For the sake of convenience, the petitioners in the captioned petitions will be referred to by their name, though, collectively they will be adverted to as “petitioners”. Likewise, the institutes/colleges in which the petitioners sought admission or were given admission and thereafter, sought upgradation will also be referred to by their respective names.

2.1. Sir Samuel Romilly<sup>1</sup> long ago equated education with charity. A journey through this case demonstrated it is not so. The focus of the institutions has been on the money they collect in the form of fees and other charges. Students are rushed through the admission process, in a figure of speech, like fish. The institutions are geared to catch (or should I say) ‘admit’ as they can before the rubicon (i.e. the cut-off date) is crossed. Students if they meet the deadlines are told you can be aspirational and improve your lot only if he/she has deep pockets and power to stay the course.

2.2. The short issue which arises for consideration in these petitions is: whether reporting for admission could be equated with payment of fees by the petitioners under the regime put in place by the University in the form of terms and conditions provided in the “Admission Brochure for Academic Session 2019-20 (Part-A)” [hereafter referred to as “Admission Brochure”] and/or the various notifications issued by the University between 07.08.2019 and 14.08.2019?

**Backdrop: -**

3. Before I proceed further, it will be relevant to set forth brief facts insofar as they are relevant for disposal of the petitions *qua* each of the

petitioners.

**Valence Kundra [W.P.(C) No.12519/2019]**

1. Valence Kundra made an online application for admission to the University in May-June 2019. He was allotted a seat in Delhi Institute of Technology and Management (Computer Science Engineering/Software Engineering) [DITM-CSE], *albeit*, in the 2<sup>nd</sup> round. Valence Kundra chose not to pay the part-academic fee of Rs. 40,000/-, (which he was otherwise supposed to pay since he had been allotted a seat) perhaps for the reason that he wanted to improve his choice of course and/or institute by taking a chance in the spot counselling rounds i.e. the 5<sup>th</sup> and 6<sup>th</sup> round.

2. Thus, quite naturally, Valence Kundra was not considered for admission in the 3<sup>rd</sup> and 4<sup>th</sup> round of counselling. He took his chance in the 5<sup>th</sup> round which was the first of the two rounds of spot counselling held by the University.

3. In order to participate in the 5<sup>th</sup> round i.e. the first of the two rounds of spot counselling, Valence Kundra prepared a demand draft in the sum of Rs.2,000/- as required *qua* candidates who fell in the category of those candidates, who, though allocated a seat in the earlier rounds had not paid part-academic fee of Rs. 40,000/-.

3.1. Valence Kundra claims that he reported for admission to HMR Institute of Technology & Management, First Shift, Hameedpur, Delhi [hereafter referred to as HMR Institute] at about 10:30 A.M. on 13.08.2019 and paid the part-academic fees amounting to Rs. 40,000/- at about 12:30 P.M. on the same date.

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<sup>1</sup> *Morice vs. Bishop of Durham*, (1805) 10 Ves 522.

4. It may be relevant to note, at this stage itself, that it is the stand of Valence Kundra that he chose not to freeze a seat, and therefore, deposit Rs. 75,000/- with HMR Institute in this round i.e. the 5<sup>th</sup> round as he wanted to take his chance in the next round of counselling i.e. the 6<sup>th</sup> round.

4.1. It is because Valence Kundra did not deposit the balance academic fee of Rs. 75,000/-, he was not allowed to participate in the 6<sup>th</sup> round of counselling.

5. Valence Kundra's grievance is that he was wrongly excluded from the 6<sup>th</sup> round of counselling. It is his say that as per the notifications in vogue, he could have waited till the 6<sup>th</sup> round before opting for the course/institute of his choice.

#### **Aayush Sharma [W.P.(C) No.12650/2019]**

6. Aayush Sharma made an online application for admission to the University in May-June 2019. He was allotted a seat in the BBA programme in Jagannath International Management School, Greater Noida (hereafter referred to as "JIMS, Noida") in the 1<sup>st</sup> round. Accordingly, Aayush Sharma paid the part-academic fee of Rs. 40,000/- on 26.07.2019 at about 02:45 P.M.

7. Aayush Sharma, however, took a chance in the 2<sup>nd</sup> round as well when he was allotted a seat in Bhagwan Parshuram Institute of Technology (hereafter referred to as "BPIT"). He continued to retain his seat in BPIT in the 3<sup>rd</sup> as well as 4<sup>th</sup> round. For some reason, Aayush Sharma chose not to freeze the seat allotted to him in BPIT. This may have been perhaps for the reason that he wanted to improve his choice of course or institute by taking a chance in the spot counselling rounds i.e. the 5<sup>th</sup> and 6<sup>th</sup> round.

8. The record shows that Aayush Sharma took his chance in the 5<sup>th</sup> round, which was, as noticed before, the first of the two rounds of spot counselling held by the University. Aayush Sharma was allotted a seat in Jagannath International Management School, Vasant Kunj, New Delhi [hereafter referred to as “JIMS, VK”] in this round i.e. the 5<sup>th</sup> round of counselling.

9. For participating in the 5<sup>th</sup> round, Aayush Sharma claims that he reported to JIMS, VK in terms of the Provisional Offer Letter (POL) issued to him with Rs. 5,000/-, *albeit* in cash, at about 9 A.M. on 14.08.2019 as no Demand Draft could be prepared by the bank in such short span of time.

10. Aayush Sharma avers that owing to the insistence on payment of balance academic fee of Rs. 68,000 *via* a Demand Draft (which could not be prepared due to the shortage of time), he was marked as a not-reported candidate, resulting in his admission being cancelled.

11. Consequently, he was rendered ineligible for taking part in the 6<sup>th</sup> round i.e. the second round of spot counselling.

#### **Vivek Dubey [W.P.(C) No.12708/2019]**

12. Vivek Dubey who falls in the category of Economically Weaker Section (“EWS Category”), in May-June 2019, made an online application for admission to the University. He was allotted a seat in the BBA programme in Jagannath International Management School, Greater Noida (“JIMS, GN”) in the 1<sup>st</sup> round. Vivek Dubey did not freeze his seat in JIMS, GN.

13. In the 3<sup>rd</sup> round, Vivek Dubey was allotted a seat in G B Pant Government Engineering College- Electrical & Computer Engineering

(GBGEC-ECE). Accordingly, Vivek Dubey paid the part-academic fee of Rs. 40,000/- on 04.08.2019 at about 03:13 P.M. Vivek Dubey did not freeze his seat in this round.

14. He participated in the 4<sup>th</sup> round and was allotted a seat in Ambedkar Institute of Advanced Communication & Technologies & Research-Electrical & Computer Engineering [hereafter referred to as “AIACTR-ECE”]. Vivek Dubey, perhaps, with the desire of improving his choice of course and/or institute decided to take a chance in the spot counselling rounds i.e. the 5<sup>th</sup> and 6<sup>th</sup> round.

15. Vivek Dubey took his chance in the 5<sup>th</sup> round of counselling. He was allotted a seat in B.Tech. (Chemical Engineering) (Dual Degree) programme in University School of Chemical Technology, Dwarka, New Delhi [hereafter referred to as “USCT”] in this round i.e. the 5<sup>th</sup> round.

16. Vivek Dubey claims that he reported to respondent No. 2 institute in terms of the POL issued to him with Rs. 7,000/-, *albeit* in cash, at about 10 A.M. on 14.08.2019 as he was unable to obtain a Demand Draft at such short notice.

17. Vivek Dubey avers that owing to the insistence on payment of balance academic fee of Rs. 30,000 by means of a Demand Draft (which could not be prepared due to the shortage of time), he was marked as a candidate who had not reported, resulting in his admission being cancelled. Resultantly, he was treated as not being eligible for taking part in the 6<sup>th</sup> round.

18. It is pertinent to note that Vivek Dubey avers that his father, after arranging the funds, has reached the USCT at about 12:30 P.M on 14.08.2019.

### **Snehil Shrey [W.P.(C) No.10689/2019]**

19. Snehil Shrey made an online application for admission to the University in May-June 2019. Snehil Shrey was allotted a seat in the BBA programme in Shri Guru Teg Bahadur Institute of Management and Information Technology [hereafter referred to as “SGTBIMIT”] in the 1<sup>st</sup> round. Accordingly, Snehil Shrey paid the part-academic fee of Rs. 40,000/- on 26.07.2019 at about 07:57 A.M.

20. Snehil Shrey was upgraded to JIMS, VK in the 3<sup>rd</sup> round and retained the said seat in the 4<sup>th</sup> round. Accordingly, Snehil Shrey paid the balance academic fee of Rs. 66,400/- on 09.08.2019 to JIMS, VK and deposited all his original documents.

21. In order to improve his choice of course or institute, Snehil Shrey took his chances in the spot counselling rounds i.e. the 5<sup>th</sup> and 6<sup>th</sup> round.

22. Snehil Shrey was upgraded to Institute for Innovation Technology and Management [hereafter referred to as “IITM”] in the 5<sup>th</sup> round which was the first of the two rounds of spot counselling held by the University. In the interregnum, Snehil Shrey claims that he was informed by respondent No. 2 institute, on 14.08.2019, that his admission with JIMS, VK stood cancelled.

23. In order to participate in the 5<sup>th</sup> round i.e. the first of the two rounds of spot counselling, Snehil Shrey claims that his father approached IITM on 14.08.2019. However, his father was informed that the admission of his ward with IITM can only be confirmed after paying the entire balance academic fee amounting to Rs. 68,400/- and submission of originals.

24. Given the fact that the fees and originals stood deposited with JIMS, VK, Snehil Shrey’s father expressed his inability to submit the same immediately. Hence, Snehil Shrey was not marked as a reported candidate

resulting in his admission being cancelled. Consequently, he was rendered ineligible to take part in the 6<sup>th</sup> round i.e. the second round of spot counselling.

**Aditya Aggarwal [W.P.(C) No.12112/2019]**

25. Aditya Aggarwal appeared in the JEE (Main) Examination in April 2019 and registered himself on 10.07.2019 with the University in order to enable him to participate in the counselling process. Aditya Aggarwal was allotted a seat in JIMS Engineering Management Technical Campus, Knowledge Park-III, Greater Noida [hereafter referred to as “JIMSEMTC”], *albeit*, in ECE branch, in the 1<sup>st</sup> round. Accordingly, Aditya Aggarwal paid the part-academic fee of Rs. 40,000/- on 25.07.2019 at about 11:36 P.M.

26. Aditya Aggarwal was again allotted the JIMSEMTC, *albeit*, in CSE branch, in the 2<sup>nd</sup> round which was retained by him in the 3<sup>rd</sup> as well as 4<sup>th</sup> round. Accordingly, Aditya Aggarwal paid the balance academic fee of Rs. 65,000/- on 07.08.2019 to JIMSEMTC and deposited all his original documents.

27. Aditya Aggarwal took his chance in the 5<sup>th</sup> round which was the first of the two rounds of spot counselling held by the University. Aditya Aggarwal was allotted Maharaja Agrasen Institute of Technology, New Delhi [hereafter referred to as “MAIT”] in the 5<sup>th</sup> round of counselling.

28. In order to participate in the 5<sup>th</sup> round i.e. the first of the two rounds of spot counselling, POL was issued to Aditya Aggarwal informing him that his earlier seat with JIMSEMTC stood cancelled and he was now allotted MAIT.

29. However, in the interregnum, Aditya Aggarwal claims that he was

informed by JIMSEMTC that he could attend the classes from 16.08.2019. Aditya Aggarwal, accordingly, started attending classes from 19.08.2019 in the JIMSEMTC and also paid “transport fee” on the said date to JIMSEMTC. Aditya Aggarwal avers that he received a call from JIMSEMTC, *albeit*, on 22.08.2019 informing him that his admission with it stood cancelled.

30. Aditya Aggarwal claims that he approached MAIT, *albeit*, on 13.08.2019, when, he was directed to deposit balance academic fee amounting to Rs. 93,500/- and originals documents. Given the fact that the fees and originals stood deposited with JIMSEMTC and also the fact that he was a EWS candidate, Aditya Aggarwal expressed his inability to submit the same immediately without the refund being processed by JIMSEMTC.

31. Owing to the insistence of payment of balance academic fee of Rs. 93,500 by means of a Demand Draft and submission of originals, he was not marked as a reported candidate resulting in his admission being cancelled. Consequently, he was rendered ineligible to take part in the 6<sup>th</sup> round i.e. the second round of spot counselling.

#### **Monu Sharma [W.P.(C) No.12114/2019]**

32. Monu Sharma made an online application for admission to the University in May-June 2019. He was allotted a seat in MAIT in the 5<sup>th</sup> round. Accordingly, Monu Sharma paid the part-academic fee of Rs. 40,000/- on 13.08.2019 at about 01:30 P.M. He also paid the balance academic fee amounting to Rs. 95,300/- to MAIT on 13.08.2019.

33. Monu Sharma avers that he started attending classes in MAIT from 14.08.2019. He further claims that he was allotted a seat in Bhagwan

Parshuram Institute of Technology, New Delhi [hereafter referred to as “BPIT”] in the 6<sup>th</sup> round, *albeit*, without his consent.

34. Monu Sharma avers that he approached BPIT on 14.08.2019 and conveyed the authorities to retain his previous seat in MAIT. However, his candidature with BPIT was cancelled as he was marked as a “not-reported” candidate.

35. Monu Sharma claims that he was informed by MAIT, on 17.08.2019 that his admission with the said institute stood cancelled.

### **Petitioners in W.P.(C) 12111/2019, 12151/2019 & 10905/2019**

36. Insofar as these petitioners are concerned, their details with regard to when they were allotted seats and at what juncture they paid their part-academic fee and the balance academic fee are given in a synoptic form in the table below along with ones whose facts are narrated in paragraphs 1 to 35 above.

#### **CHART OF THE PETITIONERS ETCHING OUT ALL MATERIAL PARTICULARS: -**

S. No.	Name of the petitioner	Program me	Name of Colleges Allotted in all rounds	Payment of Part Academic Fee of Rs. 40,000	Balance Academic Fee Already Paid
1.	Bharat Kumar	BBA	1st Round: SIMS -2nd Shift 2nd Round: Continued With (in short ‘CW’) SIMIS 3rd Round: TIAS - 2nd Shift 4th Round: CW TIAS 5th Round: DIRD NP – 2nd Shift	26.07.2019 at 12:05 P.M.	49,000 on 08.08.2019 to TIAS
2.	Srishti Kathait	BBA LLB	1st Round: - 2nd Round: - 3rd Round: DME 4th Round: CW DME 5th Round: SVCLHS	3rd Round	48,000 on 07.08.2019 to DME
3.	Aditya Bajaj	BBA	1st Round: - 2nd Round: FIMT 3rd Round: DSPSR 4th Round: TIAS	31.07.2019 at 02:12 P.M.	49,000 on 09.08.2019 to TIAS

			5th Round: SGITBIMIT		
4.	Sahil Gupta	BBA	1st Round: TIAS 2nd Round: CW TIAS 3rd Round: CW TIAS 4th Round: CW TIAS 5th Round: RDIAS	25.07.2019 at 05:47 P.M.	49,000 on 09.08.2019 to TIAS
5.	Madhvi Pal	BEdu	1st Round: RCIT 2nd Round: SRITE 3rd Round: CW SRITE 4th Round: CW SRITE 5th Round: KIHEAT	28.07.2019 at 11:23 A.M.	14,225 on 06.08.2019 to SRITE
6.	Divij	B.Tech	1st Round: BMCEM (EEE) 2nd Round: ADGITM – 1 <sup>st</sup> Shift (CVE) 3rd Round: BPIT (EEE) 4th Round: CW BPIT 5th Round: CW BPIT 6 <sup>th</sup> Round: MSIT – 1 <sup>st</sup> Shift (EEE)	27.07.2019 at 10:17 A.M.	85,800 to BPIT on 08.08.2019
7.	Ashish Kumar	B.Tech	1st Round: DTC (CVE) 2nd Round: ADGITM – 1 <sup>st</sup> Shift (CVE) 3rd Round: GTBIT- 2 <sup>nd</sup> Shift (ECE) 4th Round: BPIT (ECE) 5th Round: CW BPIT 6 <sup>th</sup> Round: GBPGECE (ECE)	27.07.2019 at 12:22 P.M.	85,800 on 09.08.2019 to BPIT
8.	Junaid	B.Tech	1st Round: HMRITM – 1 <sup>st</sup> Shift (CSE) 2nd Round: USCT (BCE) 3rd Round: USCT (CE) 4th Round: MAIT 1 <sup>st</sup> Shift (EEE) 5th Round: CW MAIT 6 <sup>th</sup> Round: USCT (CE)	27.07.2019 at 10:44 A.M.	95,300 on 08.08.2019 to MAIT
9.	Nargis	BBA	1st Round: - 2nd Round: - 3rd Round: SIMS 4th Round: CW SIMS 5th Round: Meera Bai College	3 <sup>rd</sup> Round	54,500 on 09.08.2019 to SIMS
10.	Jaskirat	BA (JMC)	1st Round: - 2nd Round: - 3rd Round: TIAS (1 <sup>st</sup> Shift) 4th Round: CW TIAS 5th Round: TIIPS	04.08.2019 at 09:47 P.M.	46,000 on 09.08.2019 to TIAS
11.	Shubham Mangla	BBA	1st Round: - 2nd Round: - 3rd Round: TIAS (2 <sup>nd</sup> Shift) 4th Round: TIAS (2 <sup>nd</sup> Shift) 5th Round: CW TIAS 6 <sup>th</sup> Round: GIBS	03.08.2019 at 09:48 P.M.	49,000 on 09.08.2019 to TIAS
12.	Sakshi Mohan Pandey	BBA	1st Round: RCIT 2nd Round: SRITE 3rd Round: CW SRITE 4th Round: CW SRITE	28.07.2019 at 09:57 A.M.	14,225 on 06.08.2019 to SRITE

			5th Round: SRITE 6 <sup>th</sup> Round: KIHEAT		
13.	Monu Sharma	B.Tech	1st Round: - 2nd Round: - 3rd Round: - 4th Round: - 5th Round: MAIT – 1 <sup>st</sup> Shift (MAE) 6 <sup>th</sup> Round: BPIT (ECE)	13.08.2019 at 01:30 P.M.	Rs. 95,300/- on 13.08.2019 to MAIT
14.	Valence Kundra	B.Tech	1st Round: - 2nd Round: DITM (CSE) 3rd Round: - 4th Round: - 5th Round: HMR Institute – 1 <sup>st</sup> Shift (CSE)	13.08.2019 at 12:30 P.M.	-
15.	Vivek Dubey	B.Tech	1st Round: - 2nd Round: - 3rd Round: GBP GEC (ECE) 4th Round: AIACTR (ECE) 5th Round: USCT (CE)	04.08.2019 at 03:13 P.M.	-
16.	Aayush Sharma	B.Tech	1st Round: JIMS, NOIDA 2nd Round: BPIT 3rd Round: CW BPIT 4th Round: CW BPIT 5th Round: JIMS, Vasant Kunj- 2 <sup>nd</sup> Shift	26.07.2019 at 02:45 P.M.	-
17.	Aditya Aggarwal	B.Tech	1st Round: JIMSEMTC (ECE) 2nd Round: JIMSEMTC (CSE) 3rd Round: CW JIMSEMTC 4th Round: CW JIMSEMTC 5th Round: MAIT – 1 <sup>st</sup> Shift (MAE)	25.07.2019 at 11:36 P.M.	Rs. 65,000/- on 07.08.2019 to JIMSEMTC
18.	Snehil Shrey	BCA	1st Round: SGTBIMIT 2nd Round: CW SGTBIMIT 3rd Round: JIMS 4th Round: CW JIMS 5th Round: IITM	26.07.2019 at 07:57 A.M.	Rs. 66,400/- on 09.08.2019 to JIMS
19.	Mallika Malhotra	B.Tech	1st Round: MAIT- 1 <sup>st</sup> Shift (EEE) 2nd Round: BVCE – 2 <sup>nd</sup> Shift (ECE) 3rd Round: MAIT- 1 <sup>st</sup> Shift (ECE) 4th Round: MSIT- 2 <sup>nd</sup> Shift (IT) 5th Round: CW MSIT 6 <sup>th</sup> Round: BVCE- 2 <sup>nd</sup> Shift (IT)	26.07.2019 at about 07:57 A.M.	Rs. 95,300/- on 07.08.2019 to MSIT Rs. 95,200/- on 17.08.2019 to BVCE
20.	Rahul Airi	B.Tech	1st Round: ADGITM – 1 <sup>st</sup> Shift (CSE) 2nd Round: - 3rd Round: - 4th Round: - 5th Round: MSIT – 2 <sup>nd</sup> Shift (CSE) 6 <sup>th</sup> Round: BVCE- 2 <sup>nd</sup> Shift (CSE)	13.08.2019 at 11:32 A.M.	Rs. 95,300/- on 13.08.2019 to MSIT Rs. 95,200/- on 17.08.2019 to BVCE
21.	Aditya Tripathi	B.Tech	1st Round: MSIT – 2 <sup>nd</sup> Shift (CSE) 2nd Round: MSIT – 1 <sup>st</sup> Shift (CSE)	27.07.2019 at 10:44 A.M.	Rs. 95,300/- on 09.08.2019 to MSIT

			3rd Round: CW MSIT 4th Round: CW MSIT 5th Round: CW MSIT 6 <sup>th</sup> Round: BVCE- 1 <sup>st</sup> Shift (CSE)		Rs. 95,200/- on 19.08.2019 to BVCE
22.	Yashwardhan	B.Tech	1st Round: - 2nd Round: HMR Institute- 1 <sup>st</sup> Shift (CSE) 3rd Round: - 4th Round: - 5th Round: - 6 <sup>th</sup> Round: BVCE- 1 <sup>st</sup> Shift (ECE)	16.08.2019 at 08:18 P.M.	Rs. 95,200/- on 17.08.2019 to BVCE
23.	Aryan Singh	B.Tech	1st Round: MAIT 1 <sup>st</sup> Shift 2nd Round: BVCE 2 <sup>nd</sup> Shift (ECE) 3rd Round: MAIT 1 <sup>st</sup> Shift (ECE) 4th Round: MSIT 2 <sup>nd</sup> Shift (IT) 5th Round: CW MSIT 6 <sup>th</sup> Round: BVCE- 2 <sup>nd</sup> Shift (IT)	26.07.2019 at about 02:04 P.M.	Rs. 95,200/- on 08.08.2019 to BVCE Rs. 95,200/- on 17.08.2019 to BVCE

**The University's stand *qua* the notifications issued in connection with spot counselling: -**

37. The University had uploaded, on its web-portal, various notifications for the purposes of filling-up seats in the spot counselling. The notifications published by the University spanned between 07.08.2019 and 14.08.2019.

37.1. A notification was issued on each day between 07.08.2019 and 14.08.2019, save and except, 12.08.2019. In fact, on 13.08.2019, two notifications were issued.

37.2. The University, based on these notifications, says that since the petitioners did not report for admission within the cut-off date, they were either not considered or their admission was cancelled. As noticed above, the University equates reporting with payment of fees.

37.3. In support of the plea that the cut-off date is sacrosanct, reliance is placed by the University on the judgment of the Supreme Court in ***Priya Gupta vs. State of Chhattisgarh***, (2012) 7 SCC 433, and ***Parsvanath Charitable Trust & Ors. vs. All India Council for Teacher Education***, (2013) 3 SCC 385.

38. Concededly, the eligibility criteria for registering an application for admission with the University was that the concerned candidate ought to have cleared, depending on the course that he/she applied for, one of the common entrance exams, as provided in Clause 1.2 of the Admission Brochure issued by the University.

38.1. Once the candidate cleared the Common Entrance Exam, he or she was eligible for applying for admission to a course of his or her choice *via* the online route. For this purpose, the candidate was required to deposit a fee of Rs.40,000/- as part academic fee.

39. In all, the University held six rounds of counselling, four of which were regular rounds and the last two rounds i.e. 5<sup>th</sup> and 6<sup>th</sup> rounds were spot counselling rounds which were held to fill-up seats which remained vacant after the first four rounds.

40. According to the University, the process of spot counselling for academic session 2019-2020 commenced with the issuance of the notification dated 07.08.2019. The notification set out, not only the date and time of commencement of counselling, but also its closing date and time.

40.1. The admission process *via* the spot counselling, thus, commenced on 07.08.2019 at 11:00 P.M. As per this notification, the admission process was to close on 09.08.2019 at 03:00 P.M.

40.2. As per the University, it slotted the candidates into 10 categories. Candidates falling in any one of the 10 categories could seek admission in the spot counselling rounds subject to fulfilment of conditions stipulated against each category.

40.3. Even according to the University, if one were to go through the 10 categories stipulated in the 07.08.2019 notification, it was clear that it

opened the gates for one and all including those candidates, who, had up until that date, not even registered for online counselling, though, they were, otherwise eligible for participating in admission process having qualified the Common Entrance Exam.

40.4. The terms and conditions stipulated by the notification for admission in spot counselling rounds, as provided under placitum A to E, according to the University; fell, broadly, into five slots.

40.5. The main thrust of the terms and conditions, as per the University, was that at the time of admission, the candidate should not only have deposited Rs. 40,000/- which was stipulated as the part-academic fee (if not already deposited) but also the balance academic fee which was payable to the concerned institute/college at the time of reporting for admission.

40.6. In addition, thereto, depending on which category the concerned candidate fell in, he was to deposit additional participation fee. Therefore, if a candidate was a new entrant, he was to deposit Rs.1,000/- as participation fee. Likewise, if the candidate had been allocated a seat and had also reported for admission but wanted upgradation, he was required to deposit an additional participation fee of Rs.2,000/- along with Rs.5,000/- as transfer fee/upgradation fee.

40.7. In case the upgradation involved change of institute/college, the candidate, though entitled to refund, was required to give up the seat which the candidate had been allotted earlier.

40.8. In the case of the candidate, who, though registered, had not been allotted a seat or had not obtained the course or institute/college of his or her choice, such candidate was required to deposit an additional participation fee of Rs.2,000/- and the academic fee (which included the part-academic fee of

Rs.40,000/-).

40.9. Likewise, candidates, who had been allocated a seat but had not paid the part-academic fee of Rs.40,000/-, they were required to pay an additional participation fee of Rs.2,000/- along with the total academic fee (which included part-academic fee of Rs.40,000/-).

41. As regards the candidates who had been registered or allocated seats and had, after paying the fee, withdrawn or not reported, they could also participate in the spot counselling by depositing an additional participation fee of Rs.2,000/- along with total academic fee. Obviously, candidates falling in this category would have the fee already paid by them adjusted.

42. The University claims that it followed up the 07.08.2019 notification with the notification dated 08.08.2019 and 09.08.2019.

42.1. *Via* notification dated 08.08.2019, the University extended the schedule for reporting by candidates who had been allotted seats in various institutes/colleges.

42.2. Importantly, notification dated 09.08.2019 indicated, in no uncertain terms, that the reporting by candidates stood completed on the said date i.e. 09.08.2019. The notification thus, only extended the time for registration and choice filling for spot counselling. The time for **registration** for spot counselling was extended up until 04.30 P.M. on 10.08.2019 (wrongly printed as 10.08.2018) while the time for **choice filling** (which commenced as per this notification at 07:00 P.M. on 09.08.2019) was extended till 05:00 P.M. on 10.08.2019.

42.3. Notably, 09.08.2019 notification indicated that there may still be vacant seats or some admitted students may withdraw or not report after allotment or withdrawal may be carried out after the declaration of results of

spot counselling and therefore, the resultant vacancy could be filled-up by another round of online counselling. It was also made clear that after declaration of result of spot round of counselling, neither any new candidates would be admitted nor would change in preference/choice be allowed.

42.4. The 09.08.2019 notification was, however, modified by a notification dated 10.08.2019. This notification extended, for the purposes of spot counselling, the registration date from 04:30 P.M. on 10.08.2019 to 11:30 A.M. on 11.08.2019, and likewise, in respect of choice-filling, time was extended from 05:00 P.M. on 10.08.2019 to 12:00 noon on 11.08.2019.

43. On 11.08.2019, the result of the 5<sup>th</sup> round of counselling (i.e. the 1<sup>st</sup> round of spot counselling) was declared *via* a notification issued on that very date.

43.1. In this notification, the activities to be undertaken after the declaration of results were set forth. The activities were divided into four steps: first step involved payment of part-academic fee of Rs.40,000/- . A candidate was required to pay the same only *via* net-banking or credit card/debit card.

43.2. The second step required the candidate, who had been allotted seats, to print the *offer letter* of admission. Time for this purpose was set to expire at 03:00 P.M. on 13.08.2019.

43.3. The third step required the candidate to generate a fee receipt in respect of the part-academic fee of Rs.40,000/- paid by him as a part of the first activity-step. The time for this activity was also set to expire by 03:00 P.M. on 13.08.2019.

43.4. The fourth step in the schedule of activity required the candidate to freeze the allotment made in his or her favour. As per this activity-head, if a

candidate was satisfied with the seat allotted to him/her and, therefore, did not wish to participate in the subsequent round of counselling for the purposes of upgradation, he/she could click the freeze option available on the University's web-portal and report to the concerned institute/college by 06:30 P.M. on 13.08.2019. However, on the other hand, if the candidate did not freeze the allotted seat, presumably, for the reason that he/she was not satisfied with the choice offered either as to the programme or the institute/college or both, according to the University, the candidate was required, even then, to report to the allotted institute/college. The closing date and time for this was also fixed as 06:30 pm on 13.08.2019. The candidate was required to report to the allotted institute/college with "**admissible payment**" and fees/documents for verification purposes. The time for this purpose was provided between 09:30 A.M. and 06:30 P.M. on 13.08.2019. The reporting requirement, as stipulated in the notification, read as follows.

***“Reporting of candidates to the allotted Institute/college***

*The candidates are required to report and join the respective Schools/College with the Provisional Offer/Allotment Letter, the Academic Fee Receipt and the necessary record for verification of documents at the Schools/Institution/College. The candidates are required to pay the balance amount of fees (if any), as per Notice available on University website [www.ipu.ac.in](http://www.ipu.ac.in), or [www.ipuadmissions.nic.in](http://www.ipuadmissions.nic.in) failing which the admission shall be automatically cancelled and the candidate will lose [sic: lose] any claim to the allotted seat.”*

43.5. Interestingly, the 11.08.2019 notification, which set out the schedule of activity to be followed by the candidates after spot counselling results

were declared, also alluded to the fact that very same steps would have to be followed if the seats were left vacant after the completion of process on 13.08.2019. These very steps were replicated once again in the said notification.

43.6. The tentative date for the sixth round of spot counselling was given as 14.08.2019.

44. The University claims that on 13.08.2019 yet another notification was taken out, which was identical to the 11.08.2019 notification, save and except, that the time for completing the process under each activity was extended by one-and-a-half hours to three hours. This notification was uploaded, according to the University, on the NIC web-portal, at **05:11 P.M.** However, by **10:32 P.M.**, another notification was uploaded on the same date i.e. 13.08.2019 whereby the time for each activity was extended in a manner that it spilled over to 10:30 A.M. on 14.08.2019.

44.1. On 14.08.2019, the results of the 6<sup>th</sup> round of spot counselling were declared, as per the University, on the NIC online portal, at **11:31 P.M.** According to the University, since 15.08.2019, that is, the original cut-off date fell on a day which was a national holiday, the 14.08.2019 notification provided that the candidates could report to various self-financing institutes/colleges for seeking admission between 09:00 am and 04:00 P.M. on 16.08.2019.

44.2. As per the University, in the 6<sup>th</sup> round of spot counselling, 2036 candidates were upgraded and allotted seats in consonance with their choice and preference out of which 1560 candidates reported in the upgraded institutes within the cut-off date and time, as stipulated in the 14.08.2019 notification.

44.3. In other words, according to the University, despite the 14.08.2019 notification, having been uploaded at **11:31 P.M.** on that date, as many as 1560 candidates reported for admission.

**Submissions of Counsel: -**

45. Before me three sets of counsel appeared and advanced arguments. The petitioners were represented by Mr. Namit Suri, Mr. Vivek B. Saharya, Ms. Amrita Sharma, Mr. N.K. Sinha and Mr. Rama Shankar, Advocates. On behalf of various colleges/institutes affiliated to the University, arguments were advanced by Mr. Ankit Jain, and Mr. Prashant Keswani, Advocates while on behalf of the University, submissions were made by Mrs. Anita Sahani and Mrs. Ekta Sikri, Advocates.

45.1. Since facts pertaining to each of the petitioners have already been noted by me hereinabove, in order to avoid prolixity, I would capture the submissions made by counsel as regards their say *vis-à-vis* the procedure for admission as envisaged under the Admission Brochure and various notifications referred to above, the impact of the three orders dated 13.09.2019, 23.08.2019 and 16.08.2019 passed by the Supreme Court in W.P. (C) No. 1115/2019, W.P. (C) No. 1038/2019 and W.P.(C) No. 1028/2019 titled ***Rupa Kumari and Anr. vs. GGSIPU and Anr., Self-Financing Educational Institutions Association vs. GGSIPU***, and ***Self-Financing Educational Association vs. GGSIPU*** respectively, and other submissions made with regard to the cut-off date having been crossed.

45.2. However, wherever necessary, the facts pertaining to each petitioner would be adverted to only to lend clarity to the submissions made by the concerned counsel.

46. Mr. Namit Suri, Advocate who argued on behalf of Snehil Shrey, contended that his admission in JIMS, which he had obtained in the 3<sup>rd</sup> round of counselling, upon upgradation, stood wrongly cancelled after he had participated in the 5<sup>th</sup> round of counselling and was upgraded to IITM on 13.08.2019.

46.1. Mr. Suri contended that Snehil Shrey, in the earlier rounds, had not only deposited the part-academic fee of **Rs.40,000/-**, but had also made a further payment of **Rs. 66,400/-** towards the balance academic fee upon obtaining admission in JIMS.

46.2. The contention was that since not only the requisite original documents but also substantial part of the fee had been deposited before the cut-off date, the cancellation of Snehil Shrey's admission on the purported ground of non-reporting was unlawful. The University's insistence that Snehil Shrey ought to have deposited, once again, an amount of Rs. 68,400/- upon being upgraded to IITM in the 5<sup>th</sup> round was untenable in law.

46.3. According to Mr. Suri, Snehil Shrey fell in the category of "**admitted**" students and was governed by Clause 11.11 of the Admission Brochure and, therefore, his admission could not have been cancelled on account of alleged ground of non-reporting to the upgraded college i.e. IITM, simply, because a fresh amount towards fee was not paid and original documents were not deposited.

46.4. In other words, the University's attempt at triggering such conditions by taking recourse to notifications which were not in sync with the conditions provided in the Admission Brochure amounted to "**changing the rules of the game once the game had commenced**". In this context, Mr. Suri stressed on the fact that the Admission Brochure was issued in March

2019 whereas the notifications on which reliance was placed by the University were issued in August 2019.

46.5. It was submitted that the conditions incorporated in the Admission Brochure *vis-à-vis* spot counselling were sacrosanct from which the University could not have deviated. In support of this submission, reliance was placed on the judgment dated 07.01.2019, passed in W.P. (C) No. 11903/2018, titled ***Prachi vs. GGSIPU***.

46.6. The contention was that merely because Snehil Shrey participated in the spot counselling pursuant to the notifications issued by the University between 07.08.2019 and 14.08.2019, it cannot impede his right to approach the Court for remedying a wrong done to him by moving a petition under Article 226 of the Constitution on the ground that the provisions of the Admission Brochure have been given a go by, misconstrued and, perhaps, superseded at the  $n^{\text{th}}$  hour exposing him to adverse civil consequences.

46.7. In support of this submission, reliance was placed by Mr. Suri on the judgment of the Supreme Court dated 17.12.2019, passed in Civil Appeal No. 9482/2019, titled ***Dr. (Major) Meeta Sahai vs. State of Bihar***.

46.8. It was submitted that that provisions made in Clause 11.10 of the Admission Brochure which, *inter alia*, required a candidate to report to the college in which he had been granted admission along with the requisite documents and evidence of having paid the part-academic fee as also the balance academic fee in order to avoid his/her admission being cancelled was not applicable to admission sought by candidates *via* the route of spot counselling, *qua* which, conditions were provided in Clause 11.11 of the Admission Brochure.

46.9. Mr. Suri submitted that the conditions stipulated in Clause 11.10

could be triggered only *vis-à-vis* seats to which admission was sought after the 4<sup>th</sup> round of counselling was over but before the spot counselling commenced. For this purpose, Mr. Suri laid emphasis on the expression “***after the sliding round of online seat allotment***”.

47. According to Mr. Suri the very fact Clause 11.11 of the Admission Brochure followed Clause 11.10 and did not advert to cancellation of the admission for non-payment of balance academic fee or submission of original documents demonstrated that the conditions contained therein did not apply to seats filled-up *via* spot counselling.

47.1. It was also the contention of Mr. Suri that since Snehil Shrey met the eligibility criteria for admission, having cleared the common entrance exam, and having paid a substantial part of the academic fee as also deposited the original documents, he could not be denied admission based on an untenable ground that he had not reported for admission on or before the cut-off date. Besides this, Mr. Suri submitted, *albeit* alternatively, that given the facts obtaining in Snehil Shrey’s case, he could not be denied admission just because the cut-off date had been crossed, as alleged by the University. In support of this submission, reliance was placed on the judgment of the Supreme Court dated 13.12.2019, passed in Civil Appeal No. 1089/2019, titled ***S. Krishna Sradha vs. The State of Andhra Pradesh and Anr.***

47.2. According to Mr. Suri, the writ petitions which were filed before the Supreme Court raised a completely different set of grievances and were not even remotely connected with the issue of reporting which arises for consideration in the instant petition.

47.3. It was contended that the Supreme Court, thus, was never called upon to adjudicate the issue of reporting which is the subject matter of the writ

petitions filed before this Court. Thus, the argument advanced on behalf of the University that the present petitions are barred on account of *res-judicata* or *constructive res-judicata* has no merit.

48. Mr. Saharya, who appeared for Mr. Vivek Dubey, Mr. Valence Kundra, and Aayush Sharma briefly made the following submissions for each one of them.

48.1. On behalf of the Mr. Vivek Dubey, Mr. Saharya submitted that he was a candidate who belonged to the *EWS category* and had been allotted a seat in G.B. Pant Engineering College in the 3<sup>rd</sup> round of counselling.

48.2. It was stated that Mr. Vivek Dubey paid a part of the academic fee i.e. **Rs.40,000/-** on 04.08.2019. Since he did not freeze the seat allotted to him in the 3<sup>rd</sup> round, he slid to the 4<sup>th</sup> round when he was allotted a seat in the Ambedkar Institute of Advanced Communication & Technologies & Research- Electrical & Computer Engineering.

48.3. At this stage, according to Mr. Saharya, Mr. Vivek Dubey was granted provisional admission after verification of documents. It was stated that there is no insistence on payment of fee, although, Mr. Vivek Dubey was treated as an “**admitted**” student.

48.4. It was further submitted that since Mr. Vivek Dubey was interested in improving his chances, he participated in the 5<sup>th</sup> round when he was allotted a seat in the University School of Chemical Technology, at which point, he was issued a POL.

48.5. According to Mr. Saharya, as per the POL, Mr. Vivek Dubey was required to deposit only Rs.7,000/- as spot counselling fee at the time of reporting as his was a case of upgradation. Furthermore, it was stated by Mr. Saharaya that on 13.08.2019, Mr. Vivek Dubey received an SMS from the

University at about 08:00 PM whereby he was informed that the reporting date had been extended.

48.6. On visiting the web-portal of the University, Mr. Vivek Dubey became aware of the fact that he had been allotted a seat in B Tech. (Chemical Engineering) (Dual Degree) with the University School of Chemical Technology (in short 'USCT').

48.7. It was contended that, accordingly, Mr. Vivek Dubey reported to the said institute on 14.08.2019 at 10:00 AM for reporting with cash-in-hand amounting to Rs.7,000/-, as indicated in the POL.

48.8. Mr. Saharya contended that, at this juncture, Mr. Vivek Dubey was told to freeze his seat and also to make a deposit of **Rs. 30,000/-** towards balance academic fee. Since this aspect was not mentioned in the POL, according to Mr. Saharya, he could not immediately arrange the necessary funds, though, when his father reached the said college at 12:30 PM with necessary funds, he was informed that his son's admission had been cancelled and he had been shown as having "not-reported" for admission.

48.9. Mr. Saharya submitted that Mr. Vivek Dubey had met the Vice-Chancellor of the University on 17.08.2019 when he was told that the web-portal was opened till 07:00 PM on 14.08.2019. It was stated that Mr. Vivek Dubey was in the precincts of University School of Chemical Technology till 04:00 PM on 14.08.2019 and that he was not conveyed any such information.

49. Mr. Saharya further submitted that the petitioner had not only made representation to the Registrar of the University but had also approached the Public Grievance Commission (in short 'PGC'). It was contended that the PGC *vide* its order dated 18.10.2019 had made a recommendation both to

the University and USCT to grant admission to the petitioner and to the similarly circumstanced candidates.

49.1. Mr. Saharya emphasized the fact that the notifications issued by the University did not clearly define as to what would amount to '**reporting**'. Thus, the action of the University in equating 'reporting' with 'payment of fee' was arbitrary, irrational and contrary to the principles of natural justice.

49.2. Furthermore, according to Mr. Saharya, none of the proceedings before the Supreme Court dealt with the issue at hand. Besides this, Mr. Saharya also referred to the judgment of the Supreme Court in the matter of **Varun Saini vs. GGSIPU**, (2014) 16 SCC 330 to buttress his submission that this Court could extend the date of online counselling given the peculiar facts arising in the captioned matters. In support of this very plea, reference was also made to the judgment of the Supreme Court rendered in **S. Krishna Sradha's** case.

50. Insofar as Mr. Valence Kundra was concerned, Mr Saharya submitted that he chose not to participate in the 3<sup>rd</sup> and 4<sup>th</sup> rounds of counselling and, hence, was not allotted any seat.

50.1. Mr. Valence Kundra participated in 5<sup>th</sup> round when he was issued a POL. *Via* this letter, Mr. Valence Kundra was asked to deposit Rs. 2,000/- at the time of reporting.

50.2. Mr. Valence Kundra deposited, on 13.08.2019, Rs. 40,000/- with the University towards part-academic fee. Accordingly, Mr. Valence Kundra was allotted a seat in H.M.R. Institute of Technology and Management (in short 'HMR Institute').

50.3. It was stated that it is in this background that Mr. Valence Kundra reported at HMR Institute on 13.08.2019 with a demand draft of Rs.2,000/-.

Mr. Saharya submitted that it is at this stage that Mr. Valence Kundra was informed by the person sitting on the help-desk set up by HMR Institute that he had to freeze his seat and deposit the entire balance academic fee amounting to **Rs. 75,000/-** and that, only when, this was done, his name would be shown on the web-portal as having reported for admission.

50.4. Mr. Saharya says that since Mr. Valence Kundra did not want to lose his right to participate in the 6<sup>th</sup> round which was, in effect, the 2<sup>nd</sup> round of spot counselling, he did not freeze his seat.

50.5. According to Mr. Saharya, HMR Institute wrongly indicated on its web-portal that Mr. Valence Kundra had not reported for admission -- the argument being that consequent action taken thereafter of cancelling Mr. Valence Kundra's admission was unlawful.

50.6. The other legal submissions which were made in the context of Mr. Vivek Dubey's case were also reiterated in support of Mr. Valence Kundra's matter.

50.7. I may only indicate that Mr. Valence Kundra had, in fact, been allotted a seat in the 2<sup>nd</sup> round in DITM College. Since Mr. Valence Kundra did not pay the part-academic fee amounting to Rs.40,000/-, as required, he slid to the spot counselling rounds.

51. Insofar as Mr. Aayush Sharma is concerned, it was stated by Mr. Saharya that he was allotted a seat in JIMS, NOIDA campus, *albeit*, in the 1<sup>st</sup> round. He, accordingly, paid the part academic amounting to Rs. 40,000/- on 26.07.2019 but did not freeze his seat.

51.1. In round two (2<sup>nd</sup> round) Mr. Aayush Sharma was allotted a seat a BPIT. This time as well he did not freeze his seat and chose to participate in the 5<sup>th</sup> round i.e. the first of the two spot counselling rounds.

51.2. In this round, Mr. Aayush Sharma was allotted a seat in JIMS, Vasant Kunj campus, *albeit*, in the second shift. As per the POL, he reported to JIMS, Vasant Kunj campus at 09:00 A.M. on 14.08.2019 to deposit the sum of Rs. 5,000/- and for verification of documents when he was told that he would have to deposit the entire balance academic fee amounting to Rs. 68,000/- before he could be categorized as a reported candidate on the University's web portal.

51.3. According to Mr. Saharya, since the time was short and the balance academic fee had to be deposited *via* a demand draft, Mr. Aayush Sharma could not comply with the request made by the officials of BPIT.

51.4. It was submitted that given these circumstances, Mr. Aayush Sharma made representations to the Vice-Chancellor and also approached the PGC. It was contended, although, no response was received from Vice-Chancellor, the PGC *vide* order dated 18.10.2019 recommended to University as well as BPIT to grant Mr. Aayush Sharma admission.

51.5. As far as the other legal submissions were concerned, Mr. Saharya reiterated, once again, those which have been made in support of petition filed on behalf of Mr. Vivek Dubey and Mr. Valence Kundra.

52. Ms. Amrita Sharma, Advocate who represented Mr. Aditya Aggarwal, contended that he had made a challenge to both 07.08.2019 and 11.08.2019 notifications on the ground that they were not in consonance with the provisions of University's Admission Brochure and were violative of Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and other Measures to ensure Equity and Excellence) Act, 2007 (in short ' 2007 Act') and part III of the Constitution.

52.1. Ms. Sharma brought to fore the fact that Mr. Aditya Aggarwal was an **EWS candidate** who had not only deposited the part academic fee of Rs. 40,000/- when he was allotted a seat in the 1<sup>st</sup> round in JIMS but had also deposited the balance academic fee with the same institute prior to 15.08.2019.

52.2. To be noted, according to Ms. Sharma, Rs. 40,000/- was deposited with the University on 25.07.2019 and when Mr. Aditya Aggarwal was allotted a seat in B. Tech C.S. course with JIMS, he also deposited his original documents with the said Institute on 30.07.2019.

52.3. As per Ms. Sharma, Mr. Aditya Aggarwal had frozen his seat in JIMS on 07.08.2019 and, accordingly, on the same date, deposited the sum of Rs. 65,000/- with the said institute towards balance academic fee.

52.4. Besides this, Mr. Aditya Aggarwal also paid **Rs.6,581/-** to JIMS towards books. Therefore, the contention advanced by Ms. Sharma was that on 07.08.2019, Mr. Aditya Aggarwal transcended to the category of students classified as “**admitted**” students.

52.5. Thus, the participation of Mr. Aditya Aggarwal in the spot counselling for upgradation pursuant to the issuance of 07.08.2019 notification could only be in the category of admitted students.

52.6. Therefore, when on 11.08.2019, the University declared the results of spot counselling in which Mr. Aditya Aggarwal was shown as having been allotted a seat in first shift in MAIT College, he was required to pay, at the time of reporting, only **Rs. 7,000/-**, in terms of the POL.

52.7. Since MAIT College was closed on account of Eid on 12.08.2019, Mr. Aditya Aggarwal reported at the help-desk set up by MAIT, which is when, he was told to deposit not only his original documents but also a

demand draft of **Rs. 93,500/-** towards balance academic fee.

52.8. According to Ms. Sharma, since Mr. Aditya Aggarwal was told that refund of fee and return of documents from JIMS would take at least a week, he was left in a quandary.

52.9. Thus, when, Mr. Aditya Aggarwal received information from an employee of JIMS, on 14.08.2019, that his admission with JIMS was intact, he decided to continue with his admission in JIMS.

53. Ms. Sharma contended that Mr. Aditya Aggarwal's status as a student of JIMS could not be doubted for two reasons. First, he attended classes in JIMS without any impediment between 19.08.2019 and 22.08.2019. Second, he was asked and he paid **Rs.25,000/-** as "transport fee" to JIMS on 19.08.2019. Therefore, according to Ms. Sharma, the cancellation of Mr. Aditya Aggarwal's admission by JIMS, *albeit, via* oral communication dated 22.08.2019 was unlawful.

53.1. Like counsel preceding her, Ms. Sharma contended that 07.08.2019 and 11.08.2019 notifications introduced new conditions which were not in sync with the provisions of Clause 11.11 of the Admission Brochure.

53.2. In particular, it was emphasized that sub-clause (7) of Clause 11.11 of the Admission Brochure did not stipulate payment of entire balance academic fee at the time of reporting for spot counselling. In this behalf, attention was also drawn to the POL issued to Mr. Aditya Aggarwal to demonstrate that it did not indicate that he was required to deposit the entire balance academic fee at the time of reporting.

53.3. According to Ms. Sharma, spot counselling as per the Admission Brochure had to be conducted ***offline and not online*** as was done by the University without enough prior notice. The change in methodology for

admission *via* the spot counselling route was a cause for much confusion amongst the candidates.

53.4. In sum, Ms. Sharma contended that Mr. Aditya Aggarwal fell in the category of admitted students who had frozen his seats with JIMS prior to the cut-off date and, hence, his admission could not have been cancelled by JIMS.

53.5. Ms. Sharma contended that the manner in which the University and JIMS had acted, that is, in allowing Mr. Aditya Aggarwal to attend classes and demanding and thereafter accepting the transportation-fee created a legitimate expectation in his mind that his admission in JIMS was secure.

54. Mr. N.K. Sinha represented the following 13 candidates: -

<b>S. No.</b>	<b>Name of the petitioners</b>
1.	Bharat Kumar
2.	Srishti Kathait
3.	Aditya Bajaj
4.	Sahil Gupta
5.	Madhvi Pal
6.	Divij
7.	Ashish Kumar
8.	Junaid
9.	Nargis
10.	Jaskirat
11.	Shubham Mangla
12.	Sakshi Mohan Pandey
13.	Monu Sharma

54.1. It was Mr. Sinha's contention that all 13 candidates had obtained admission in one or the other first four rounds of counselling. These candidates, as per Mr. Sinha, had not only paid the initial part-academic fee of Rs. 40,000/- but had also paid the balance academic fee before embarking on taking their chance in the 5<sup>th</sup> and 6<sup>th</sup> rounds of counselling.

54.2. Mr. Sinha's contention was that the admission of these candidates was cancelled only on account of the fact that they had not, once again, deposited the balance academic fee on being allotted a seat either in the 5<sup>th</sup> or the 6<sup>th</sup> round.

54.3. Mr. Sinha submitted that the University, in order to meet the timeline put in place by the Supreme Court in ***Parshvanath Charitable Trust***'s case, had truncated the admission process in such a manner that it did not provide enough time for the candidates to deposit fresh amounts of fee as demanded and resubmit the original documents after having them released from colleges/institutes where they had already been deposited.

54.4. In a nutshell, Mr. Sinha also contended that the candidates he was representing fell in the category of "***admitted***" candidates and, hence, they could not have been classified as those who had not reported for admission.

55. Mr. Rama Shankar, Advocate, argued on behalf of the following five candidates:

<b>S. No.</b>	<b>Name of the petitioners</b>
1.	Mallika Malhotra
2.	Rahul Airi
3.	Aditya Tripathi
4.	Yashwardhan
5.	Aryan Singh

55.1. It was submitted by Mr. Rama Shankar that Ms. Mallika Malhotra, Mr. Aryan Singh and Mr. Aditya Tripathi had deposited part-academic fee of ***Rs. 40,000/-*** on 25.07.2019, 26.07.2019 and 27.07.2019 respectively, while Mr. Rahul Airi and Mr. Yashwardhan had deposited the part-academic fee of ***Rs. 40,000/-*** on 13.08.2019 and 16.08.2019 respectively.

55.2. It was stated that insofar the balance academic fee was concerned,

insofar as Ms. Mallika Malhotra, Mr. Rahul Airi, Mr. Aditya Tripathi and Mr. Yashwardhan were concerned, they had deposited the same on 17.08.2019, while Mr. Aryan Singh and Mr. Aditya Tripathi had deposited the balance academic fee on 16.08.2019 and 19.08.2019.

55.3. Insofar as the participation fee of **Rs.7,000/-** was concerned, in case of Mr. Aryan Singh, it is stated that the same could be deposited only on 17.08.2019 as the server was down.

55.4. According to Mr. Rama Shankar, slight delay beyond 16.08.2019 took place on account of the fact that 14.08.2019 notification was uploaded only at 11:52 PM and because 15.08.2019 was a national holiday, funds for depositing the fee could not be arranged before the cut-off date and time.

55.5. The submission was that since the part-academic fee was deposited before the cut-off date, they fell in the category of admitted candidates and hence, their admission could not be cancelled simply for the reason that due to unavoidable circumstances the balance academic fee was not deposited on or before the time stipulated in the 14.08.2019 notification -- the contention being that the College in which admission had been granted to the aforementioned candidates also understood the construct of the notifications issued by the University in the manner articulated above as was apparent upon perusal of letters dated 23.08.2019 and 26.09.2019 addressed by Bhartiya Vidyapith College of Engineering.

55.6. Like, counsel preceding him, Mr. Ram Shankar also relied upon the order of the PGC dated 18.10.2019. Based on the observations made in the said order of the PGC, and the additional-affidavit dated 27.11.2019 filed by the University, Mr. Rama Shankar submitted that the University had conceded that it had granted admission to 20 students beyond the cut-off

date.

55.7. In a nutshell, Mr. Rama Shankar contended (like other counsel who appeared for other petitioners) that the failure to deposit the fee in time could not be equated with non-reporting and non-submission of documents as projected by the University.

55.8. Furthermore, Mr. Rama Shankar also submitted that the University's counter-affidavit filed with the Supreme Court in *Rupa Kumari's* case projected that the admission process stood completed on 14.08.2019 -- the argument being that the time given on 16.08.2019 was only for deposit of fee *qua* candidates whose names had been shown in the notification issued by the University on 14.08.2019.

56. Mrs. Sikri, who appeared on behalf of the University accepted that there were six rounds of counselling - four 'regular rounds' and two 'spot counselling rounds'.

56.1. The spot counselling rounds, according to Mrs. Sikri, were held to fill up the seats which remained vacant after completion of first four rounds of counselling.

56.2. According to Mrs. Sikri, once a seat was allotted to a candidate, it was mandatory for him/her to deposit the part-academic fee of Rs. 40,000/- to enable him/her to participate in the subsequent rounds of counselling. This condition, however, did not apply, according to her, for participation in spot counselling rounds.

56.3. According to Ms. Sikri, *via* the 07.08.2019 notification, the University had laid down a schedule for spot counselling and also indicated therein as to the persons who would be eligible for participation in the spot round of counselling rounds. The candidates, thus, were notified in advance that they

were to register and specify their choices of preference *qua* courses and colleges, which may become available in the spot round. According to Mrs. Sikri, the registration and choices was extended *vide* 09.08.2019 notification so that as many seats as possible are filled up.

56.4. In answer to the argument advanced on behalf of the petitioners that the methodology for admission for spot counselling had been changed from offline counselling to online counselling, Mrs. Sikri submitted that since the University received the ‘No Objection Certificate’ (in short “NOC”) from the Government of NCT of Delhi (in short “GNCTD”) rather late, it delayed the entire counselling schedule and, therefore, a decision was taken to carry out admissions in the spot round *via* online as against the offline procedure envisaged in the Admission Brochure. It was submitted that more than 20,000 students/candidates had participated in spot counselling *via* the online mode; a methodology which was only adopted to benefit the students.

56.5. Insofar as the argument advanced on behalf of the petitioners that the notifications issued between 07.08.2019 and 14.08.2019 carried conditions which were not in sync with the conditions contained in the Admission Brochure, Mrs. Sikri submitted that the petitioners having participated in the spot counselling rounds, based on the conditions contained in the said notifications, without demur or protest, were estopped from challenging the conditions contained therein merely on account of the fact that they could not gain admission. In support of this submission, reliance was placed by Mrs. Sikri on the judgment rendered in *Dhananjay Malik vs. State of Uttaranchal*, 2008 (4) SCC 171.

56.6. It was also submitted by Ms. Sikri that the results of 5<sup>th</sup> round i.e. the first of the two rounds of spot counselling were declared on 11.08.2019. The

notification issued on 11.08.2019 specified the activity schedule that had to be followed after declaration of the results which included reporting.

56.7. Thus, all candidates, according to Mrs. Sikri, had notice of the fact that reporting would mean that they have to deposit the required fee as per the category in which they fell along with the requisite documents.

56.8. Furthermore, it was submitted that the notifications also alluded to the fact that once a seat was allotted or there was an upgradation of the seat in the spot counselling round, it was mandatory for the candidate to report so as to prevent cancellation of his/her seat allotted both in the spot round and that which was allotted earlier (depending on category in which the candidate fell in the previous round).

56.9. As per Mrs. Sikri, if a candidate was allotted a seat in the 5<sup>th</sup> round and he/she was satisfied with the allotment made in his/her favour, either *vis-à-vis* the institute or the subject or both, he/she could, then, freeze the allotted seat.

57. In case the candidate was desirous of moving to the 6<sup>th</sup> round, he/she could do so only if he/she reported to the institute and deposited the total academic fee (which included the part academic fee amounting to Rs.40,000/-) and not otherwise.

57.1. Failure to do so led to not only cancellation of the seat allotted to the candidate in the earlier round, which included the spot round, but also impeded the candidate from participating in the 6<sup>th</sup> round of counselling.

57.2. In other words, while the candidate had the leeway to decide as to whether or not he/she wanted to freeze his/her seat in the 5<sup>th</sup> round, he/she had no discretion not to physically report to the institute allotted in the 5<sup>th</sup> round and also as regards the obligation to deposit the entire balance

academic fee.

57.3. Mrs. Sikri stated that after the results of the 5<sup>th</sup> round were declared on 11.08.2019, the time for reporting was extended till 06:30 PM on 13.08.2019, in the first instance, which was extended till 08:00 PM on the same date and, finally, was extended till 11:00 AM on 14.08.2019.

57.4. Insofar as the result of the 6<sup>th</sup> round was concerned (which was caricatured by the University as ‘sliding round of spot counselling’), according to Mrs. Sikri, was declared on the University’s web-portal on 14.08.2019 at **11:31 P.M.**

57.5. It was stated that *via* the notifications on and after 11.08.2019, the schedule of activity, which included payment of fee and reporting, was stipulated in each one of them. According to her, as noticed hereinabove, in the 6<sup>th</sup> round, 2036 candidates were upgraded or allotted seat as per their choice/preference indicated at the time of registration for spot counselling out of which 1560 candidates reported for admission prior to cut-off date i.e. 16.08.2019. The contention was that insofar as the petitioners were concerned, since the cut-off date i.e. 16.08.2019 was crossed, they could not be admitted. In this behalf, reliance was placed by the judgment of this Court dated 03.05.2016, passed in W.P. (C) 3538 of 2016, titled ***Pooja Verma vs. GGSIPU & Ors.***

57.6. Furthermore, it was contended that 11.08.2019 and 14.08.2019 notifications were challenged in ***Rupa Kumari***’s case and therefore, they were not open for challenge in these proceedings as the challenge made therein was repelled by the Supreme Court.

57.7. It is also stated that Ms. Madhavi Pal, who was arrayed as petitioner No. 5 in W.P. (C) 12111/2019, and Ms. Sakshi Mohan Pandey, who was

arrayed as petitioner No. 7 in W.P. (C) No. 12151/2019, were also arrayed as petitioners in ***Rupa Kumari***'s case.

57.8. Furthermore, it was contended that in the two other cases filed in the Supreme Court, in which prayers made were identical, as in ***Rupa Kumari***'s case, were dismissed by a reasoned order. Therefore, the captioned petitions are barred by the principle of *res-judicata*. In support of this plea, reference was made to the judgment rendered in ***Ram Gopal vs. Union of India***, ILR 1972 Delhi 446.

57.9. It was further argued that no admissions could be made after the cut-off date. In support of this submission, reliance was placed on the judgments of the Supreme Court in ***Parsavanath*** case, ***Varun Saini*** case, as also on an interlocutory order dated 02.12.2019, passed in LPA 761/2019, titled ***GGSIPU vs. Dhruv Kotra and Anr.***

58. Lastly, it was contended that the petitioners had made representations, in which, they had either admitted that they did not wish to take admission in the allotted institute and, thus, wanted to retain admission in the institute in which seat was allotted in the earlier round or that they had failed to report to the allotted institute within the cut-off date.

59. Mr. Prashant Keswani, who appeared for BVCE in W.P. (C) No. 10905/2019, contended that the petitioners, in this matter i.e. Mallika Malhotra and others had secured admission with it between July 2019 and early part of August 2019 i.e. before 16.08.2019.

59.1. According to Mr. Keswani, these petitioners stood admitted with BVCE prior to 16.08.2019 and the delay, though, minuscule was only in respect of deposit of balance academic fee. These petitioners, according to Mr. Keswani, were granted admission prior to 15.08.2019 i.e. cut-off date

prescribed by the Supreme Court in ***Parshavanath Charitable Trust*** case in the 6<sup>th</sup> round of counselling conducted by the University on 14.08.2019, the result of which was intimated to them *via* SMS on the same date at 11:39 PM.

59.2. The plea taken that the admissions were granted to these petitioners on 14.08.2019 prior to 15.08.2019 (cut-off date indicated in ***Parshavanath Charitable Trust*** case) was sought to be supported by the assertions made in the counter-affidavit filed by the University in the Supreme Court in the ***Rupa Kumari's*** case.

59.3. Therefore, according to Mr. Keswani, both factually and as per the University's Admission Brochure, the aforementioned petitioners would have to be treated as “***admitted***” candidates.

59.4. In support of this submission, reference was made to the provisions of sub-clause (7) of Clause 11.11 of the Admission Brochure. Mr. Keswani submitted that based on this understanding, the aforementioned petitioners attended classes from 19.08.2019 till mid-September 2019 and, hence, their admission could not be treated as mid-stream admissions as sought to be projected by the University.

59.5. Besides this, Mr. Keswani submitted that apart from Mr. Yashwardhan, all other petitioners in W.P. (C) No. 10905/2019 were only cases of transfer as they already stood admitted in colleges affiliated to the University.

59.6. Insofar as Mr. Yashwardhan was concerned, since he had not paid the part-academic fee of Rs.40,000/-, in the rounds held by the University prior to the spot counselling round, his case was, according to Mr. Keswani, a case of offer of fresh allotment of seat in the 6<sup>th</sup> round, at which point in

time, though, he paid the part-academic fee of Rs.40,000/- within the prescribed time on 16.08.2019, he paid the balance fee of Rs. 95,300/- on 17.08.2019.

59.7. Likewise, insofar as Mr. Aryan Singh was concerned, Mr. Keswani pointed out that he already stood admitted in BVCE prior to 15.08.2019, *albeit*, in a branch of Engineering different from the one that he was allotted upon participation in the 6<sup>th</sup> and final round of spot counselling held on 14.08.2019. Therefore, according to Mr. Keswani, even Mr. Aryan Singh fell in the category of admitted candidate.

60. Mr. Ankit Jain, who appeared for HMR Institute in W.P. (C) No. 12519/2019, contended that this Court while exercising powers under Article 226 of the Constitution had the power to restore the admission of the petitioners as the only reason their admission had been cancelled was that they had not paid part-academic fee *qua* institutes/colleges in which they had been allotted seats upon their participation in the spot counselling rounds.

60.1. According to Mr. Jain, what the Court had to deliberate upon was: whether payment of balance academic fee was so inextricably linked with admission that delay in its payment would lead to cancellation of admission?

60.2. Mr. Jain submitted that since no consequences had been provided for the delay in payment of fee, the provision in the notifications incorporated in that behalf could only be treated as directory and not mandatory.

60.3. Mr. Jain said that the window available for deposit of fee was only 10-15 hours, which, looking at the entirety of facts and circumstances of the case, could be looked at in a more benign and humane manner.

## **Analysis and Reasons: -**

### **I. Maintainability: -**

61. Having heard the learned counsel for the parties and perused the record, the first and foremost aspect, which needs to be dealt with is: as to whether the present writ petitions are maintainable?

62. On behalf of the University, it was contended both by Mrs. Sikri and Mrs. Anita Sahani that because the Supreme Court had dismissed petitions under Article 32 of the Constitution of India, the captioned writ petitions were not maintainable. Therefore, what is required to be examined is: whether the present actions are barred by principles of *res judicata* and/or constructive *res judicata*?

63. The principles of *res judicata* are statutorily encapsulated in Section 11 of the Code of Civil Procedure, 1908 [in short 'CPC'], which, over the years, has been recognized by judicial decisions to extend even to petitions filed under Article 226 and Article 32 of the Constitution, although, provisions of CPC do not apply to writ actions.

63.1. The reason for extending the principle to writ petitions is founded mainly on three grounds. First, on the ground of public policy. Second, that there should be finality to the decisions rendered by courts of competent jurisdiction: an aspect which is based on public weal. Third, individuals and entities should not be vexed twice over with the same kind of litigation.

63.2. However, for the principle of *res judicata* to be applied to a latter action, it should, like in a suit, relate to a matter which is directly and substantially in issue in the former action, it should be between the same parties or between parties under whom they or any of them claim, i.e., their

privies, and the earlier action should have been filed, heard and finally decided by a court having jurisdiction in the matter.

63.3. As to what could be construed as a matter in issue, one can take recourse to Explanation III of Section 11 of CPC which reads thus:

*“The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.”*

63.4. Likewise, Explanation IV to Section 11 of CPC, which, in a sense, enunciates the rule of constructive res judicata reads as follows:

*“Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”*

64. One of the first judgments, which dealt with this issue, was the judgment of the Constitution Bench of the Supreme Court in **Daryao & Ors. vs. The State of U.P. & Ors.** (1962) 1 SCR 574.

64.1. This was a case where six writ petitions were disposed of by a common judgment as they raised a common question of law i.e. as to whether or not they were barred by res judicata?

64.2. In each of the six petitions that the Supreme Court dealt with, the petitioners had moved the concerned High Court by way of a petition under Article 226 which had been rejected. In order to test the proposition, they had adverted to one such petition which emanated from the decision taken by the Board of Revenue.

64.3. The question, therefore, before the Supreme Court was whether the bar of *res judicata* could be pleaded *qua* an Article 32 petition when the grounds taken in a writ petition filed under Article 226 were the *same* as those which were raised in the Article 32 petition.

64.4. In both the petitions (i.e. that filed before the Supreme Court and the High Court), the challenge was to the decision taken by the Board of Revenue. The Supreme Court sustained the objection and, thus, applied the principle of *res judicata* to the Article 32 petition filed before it and while doing so, Hon'ble Mr. Justice P.B. Gajendragadkar (as he then was), speaking for the Court, made, *inter alia*, the following crucial observations:

*“18. The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: “subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences” [Halsbury's Laws of England, 3rd Edn., Vol. 22, p. 780, paragraph 1660] . Similar is the statement of the law in Corpus Juris: “the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction [Corpus Juris Secundum, Vol. 50 (Judgments), p. 603] ”. This rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent*

*jurisdiction [Corpus Juris Secundum, Vol. 50 (Judgments), p. 603] . “It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon” [ Ibid p. 608] . In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.*

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*26. ... It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32,*

**because in such a case there has been no decision on the merits by the Court.** We wish to make it clear that the conclusions thus reached by us are confined only to the point of *res judicata* which has been argued as a preliminary issue in these writ petitions and no other... ”

[Emphasis is mine]

64.5. In effect, the Court by its decision accepted the plea of *res judicata*, which was based on a decision of the High Court exercising jurisdiction under Article 226 of the Constitution.

65. The issue came before another Constitution Bench of the Supreme Court in ***Amalgamated Coalfields Ltd. And Another vs. Janapada Sabha Chhindwara and others***, AIR 1964 SC 1013<sup>2</sup> in the following year, *albeit*,

<sup>2</sup> “24. In the present appeals, the question which arises directly for our decision is: does the principle of constructive *res judicata* apply to petitions under Article 32 or Article 226 where the dispute raised is in respect of a year different from the year involved in a prior dispute decided by this Court? We have already noticed the points actually decided by this Court against the appellants on the earlier occasion (vide *Amalgamated Coalfields Ltd.* [1962 1 SCR 1]) One of the points sought to be raised was in regard to the validity of the increase in the rate of tax from 3 pies to 9 pies per ton; and since this point had not been taken in the petition and relevant material was not available on record, this Court refrained from expressing any opinion on it. The appellants contend that the order passed by this Court refusing permission to the appellants to raise this point on the earlier occasion does not mean that this Court has decided the point on the merits against the appellants; it may mean that the appellants were given liberty to raise this point later; but even otherwise, the point has not been considered and should not be held to be barred by constructive *res judicata*. It is significant that the attack against the validity of the notices in the present proceedings is based on grounds different and distinct from the grounds raised on the earlier occasion. It is not as if the same ground which was urged on the earlier occasion is placed before the Court in another form. The grounds now urged are entirely distinct, and so, the decision of the High Court can be upheld only if the principle of constructive *res judicata* can be said to apply to writ petitions filed under Article 32 or Article 226. In our opinion, constructive *res judicata* which is a special and artificial form of *res judicata* enacted by Section 11 of the Civil Procedure Code should not generally be applied to writ petitions filed under Article 32 or Article 226... ”

[Emphasis is mine]

involving a matter dealing with imposition of tax liability.

65.1. Once again, Hon'ble Mr. Justice P.B. Gajendragadkar, (as he then was) speaking for the Court, observed, *inter alia*, that the liability to tax from year to year is a separate and distinct liability; it is based on a different cause of action from year to year, and if any point of fact or law are considered in determining the liability for a given year, they can generally be deemed to have been considered and decided in a collateral and incidental way.

65.2. More particularly, on the applicability of the principle of constructive *res judicata*, he observed that since it is special and artificial form of *res judicata* enacted by Section 11 of the CPC, it should not generally be applied to writ petitions filed under Articles 226 and Article 32 of the Constitution.

66. Two years later, the matter came up, once again, before a Constitution Bench in ***Devilal Modi vs. Sales Tax Officer, Ratlam and Others***, (1965) 1 SCR 686 where the Supreme Court was called upon to decide: as to whether the principle of constructive *res judicata* could be invoked in respect of an assessment order passed against the appellant assessee which was sustained in the first round right upto the Supreme Court but was sought to be assailed once again by taking recourse to additional grounds?

66.1. Hon'ble Mr. Justice P.B. Gajendragadkar, (as he then was) speaking for the Court, distinguished the judgment pronounced by the Court in ***Amalgamed Coalfields Ltd.*** case by holding that the challenge in the second writ petition was in relation to a different period and not for the same period as covered by the earlier petition. The observations made by the Supreme Court in this behalf read as follows:

**"10. In regard to orders of assessment for different years, the position may be different. Even if the said orders are passed under the same provisions of law, it may theoretically be open to the party to contend that the liability being recurring from year to year, the cause of action is not the same; and so, even if a citizen's petition challenging the order of assessment passed against him for one year is rejected, it may be open to him to challenge a similar assessment order passed for the next year. In that case, the court may ultimately adopt the same view which had been adopted on the earlier occasion; but if a new ground is urged, the court may have to consider it on the merits, because, strictly speaking, the principle of res judicata may not apply to such a case.** That, in fact, is the effect of the decision of this Court in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* [(1963) Supp I SCR 172]. In that case, this Court had occasion to consider the question about the applicability of constructive res judicata to proceedings taken by the appellant, the Amalgamated Coalfields Ltd. challenging the tax levied against it for different periods. The petition first filed by it for challenging the validity of the tax imposed against it for one year was dismissed by this Court in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* [(1962) 1 SCR 1]. At the time when the appeal of the Amalgamated Coalfields Ltd. was argued before this Court, some new points of law were sought to be raised, but this Court did not allow them to be raised on the ground that they should have been raised at an earlier stage. When a similar order was passed against the said Company for a subsequent year, the said additional points were raised by it in its petition before the High Court. The High Court held that it was not open to the Company to raise those points on the ground of constructive res judicata and that brought the Company to this Court in appeal by special leave. This Court held that the High Court was in error in holding that the principle of constructive res judicata precluded the Company from raising the said points. Accordingly, the merits of the said points were considered and in fact, the said points were upheld. In dealing with the question of constructive res judicata, this Court observed that constructive res judicata was an artificial form of res judicata enacted by Section

*11 of the Code of Civil Procedure and it should not be generally applied to writ petitions filed under Article 32 or Article 226. It was in that connection that this Court also pointed out that the appeal before the Court was in relation to an assessment levied for a different year, and that made the doctrine of res judicata itself inapplicable. Mr Trivedi contends that in dealing with writ petitions, no distinction should be made between cases where the impugned order of assessment is in respect of the same year or for different years; and in support of this contention, he relied on the general observations made by this Court in Amalgamated Coalfields Ltd. [(1963) Supp I SCR 172] In our opinion, the said general observations must be read in the light of the important fact that the order which was challenged in the second writ petition was in relation to a different period and not for the same period as was covered by the earlier petition.”*

[Emphasis is mine]

67. I must also refer to two other judgments, which, though delivered in the context of application of the principle of constructive *res judicata* to petitions preferred under Article 136 of the Constitution, make some crucial observations with respect to a non-speaking order of dismissal which does not indicate the grounds/reasons of the dismissal.

67.1. The first case on this aspect is judgement rendered by the Supreme Court in *Workmen of Cochin Port Trust vs. Board of Trustees of the Cochin*, 1978 (3) SCC 119. This was a case where an Industrial Tribunal delivered an award in favour of the workmen, which was carried in an appeal by the employer to the Supreme Court.

67.2. The SLP was dismissed *in limine*. The employers thereafter filed a writ petition in the High Court. The High Court allowed the writ petition and quashed the award. The matter, thus, got carried in appeal to the Supreme Court by way of a petition filed under Article 136 of the Constitution. The

relevant observations of the Court read as follows:

**“9. It is well-known that the doctrine of res judicata is codified in Section 11 of the Code of Civil Procedure but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.**

**10. In the instant case the award of the Tribunal, no doubt, was challenged in the special leave petition filed in this Court, on almost all grounds which were in the subsequent writ proceeding agitated in the High Court. There is no question, therefore, of applying the principles of constructive res judicata in this case. What is, however, to be seen is whether from the order dismissing the special leave petition in limine it can be inferred that all the matters agitated in the said petition were either explicitly or implicitly decided against the respondent. Indisputably nothing was expressly decided. The effect of a non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must, by necessary**

implication, be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order, one finds it difficult to accept the argument put forward on behalf of the appellants that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award. A writ proceeding is a different proceeding. Whatever can be held to have been decided expressly, implicitly or even constructively while dismissing the special leave petition cannot be re-opened. But the technical rule of res judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res judicata to such an extent so as to found it on mere guesswork. ...”

[Emphasis is mine]

67.3. The other judgment of the Supreme Court, which adverts to the effect of the non-speaking order in the context of applicability of the principle of res judicata to a petition filed under Article 136 which was withdrawn unconditionally is the judgment rendered in *Ahmedabad Manufacturing & Calico Printing Co. Ltd. vs. Workmen and Another*, (1981) 2 SCC 663.

The Court made the following crucial observations:

“10. ... If a non-speaking order of dismissal cannot operate as res judicata, an order permitting the withdrawal of the leave petition for the same reason cannot so operate. The case in hand stands on a still better footing than the case of Workmen of Cochin Port Trust [(1978) 3 SCC 119 : 1978 SCC (L&S) 438 : (1978) 3 SCR 971].

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*17 .... In the instant case the appellant chose to file a petition for leave to appeal to the Supreme Court but eventually withdrew the petition and thereafter invoked the jurisdiction of the High Court under Article 226 of the Constitution and the High Court in its discretion chose to dismiss the writ petition in limine only on the ground that the petitioner had moved an application for special leave before the Supreme Court and withdrew the same unconditionally. In view of the law laid down by this Court in a recent decision in the case of Workmen of Cochin Port Trust [(1978) 3 SCC 119 : 1978 SCC (L&S) 438 : (1978) 3 SCR 971] the decision in Allison case [1957 SCR 359 : AIR 1957 SC 227] has lost its efficacy.*

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**19. After having analysed the various cases cited, we are of the view that permission to withdraw a leave petition cannot be equated with an order of its dismissal. We also come to the conclusion that in the circumstances of the case the High Court has not exercised a proper and sound discretion in dismissing the writ petition in limine on the sole ground that the application for special leave on the same facts and grounds had been withdrawn unconditionally.”**

[Emphasis is mine]

67.4. To complete the discussion, in ***Kirit Kumar Chaman Lal Kundaloya vs. Union of India and Others***, (1981) 2 SCC 436, the Supreme Court noticed, in the context of a *habeas corpus* petition filed under Article 32, the judgment of the Constitution Bench in ***Lallubhai Jogibhai Patel vs. Union of India***, (1981) 2 SCC 427, wherein the Court held that the doctrine of constructive *res judicata* is confined to civil actions and civil proceedings and is entirely inapplicable to an illegal detention order.

67.5. Based on this principle, the Court ruled that if a petition under Article 226 filed against a detention order was dismissed, a fresh petition under

Article 32 on new and additional grounds, after such dismissal, could be entertained.

68. The principles of law, which, thus, get enunciated upon perusal of the aforesaid judgments are as follows:

- (i) That the doctrine of constructive *res judicata* and *res judicata* is applicable to civil action in a civil proceeding which would include petitions filed under Article 226 and Article 32 of the Constitution.
- (ii) Before the latter action can be held to be barred by invoking the doctrine of *res judicata* and constructive *res judicata*, it should broadly meet the following parameters:
  - a) The matter in the latter action should be directly and substantially in issue in the former action in contradiction to a matter which is collaterally and or incidentally in issue.
  - b) The latter action should be between the same parties or their privies.
  - c) The former action should be filed in a Court having jurisdiction, which would have heard and finally decided the same. It would make no difference if the Court in which the former action was filed is of exclusive, concurrent or limited jurisdiction. This, of course, would not apply to superior courts having unlimited jurisdiction.
  - d) A matter would be directly or substantially in issue if it was necessary to adjudicate on the principal issue and if it was in fact decided and the judgment was based on that decision.

68.1. To add to the aforementioned broad principles, I must advert to the judgement of a Division Bench of this Court in ***Ram Gopal***'s case which

also enunciated a principle of some significance. In *Ram Gopal's* case, *inter alia*, a preliminary objection was taken *qua* a petition filed under Article 226 that the petitioner before the Court had, on an earlier occasion, filed an Article 32 petition which dealt with, broadly, the same seniority list which was under the challenge before the High Court.

68.2. The Division Bench, while sustaining this objection, made two crucial observations in paragraph 30 and 31 of the judgment. First, that a reference to the averments made in the writ petitions filed in the High Court and the Supreme Court demonstrated that both the basis of the attack and the grievance in substance and in reality, were identical.

68.3. Second, even if the Supreme Court were to dismiss an Article 32 petition by a non-speaking order, the bar of *res judicata* would apply when the “*same*” matter is sought to be reagitated in a subsequent petition filed under Article 226 before the High Court.

68.4. It went on to say that unless the order of the Supreme Court indicates that it was not dismissed on merits, it would not be open to for the petitioner to urge the same matter before the High Court.

69. Therefore, what is required to be examined is: Firstly, as to whether the captioned petitions, have been filed by the same parties who were before the Supreme Court or their privies? Secondly, whether the matter which is in issue before this Court was directly or substantially in issue in the petitions filed before the Supreme Court?

69.1. There were two petitions which were filed by the Self Financial Educational Institutions Association (hereafter referred to as “SFEA”). The first one was numbered as W.P.(C) 1028/2019 while the second petition was numbered as W.P.(C) 1038/2019. The only respondent in these petitions was

the University. No students/candidates were made parties to these petitions.

69.2. The issue which was raised in W.P. (C) 1028/2019 concerned the purported failure on part of the University to grant 9 calendar days to SFEA for filling up the management quota seats.

69.3. In this context, challenge was laid to the notification dated 23.07.2019 issued by the University. According to SFEA, this action, on part of the University, contravened the provisions of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, the Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007. In this context, Clause 6.4 of the Admission Brochure issued for academic session 2019-2020 was also adverted to.

69.4. In W.P.(C) 1038/2019, SFEA sought to lay challenge to the 11.08.2019 notification on the ground that it violates the schedule laid down by the Supreme Court in ***Parshavanath Charitable Trust*** case.

69.5. The assertion made was that the 11.08.2019 notification, which indicated that the seats which fell vacant after the 5<sup>th</sup> round of spot counselling would be declared on 14.8.2019 did not give any time to fill up the seats as the cut-off date for completing the admission process as per the aforementioned judgement was 15.8.2019.

69.6. In this context, reference was made to the previous two academic sessions i.e. 2017-2018 and 2018-2019, in which, according to them, 8 to 9 days were given to fill up the vacancies. The assertion was that at least 15 days ought to be given for admitting the students. In this context, reference was also made to the judgment of Supreme Court in ***Varun Saini*** case. In the prayer clause, the substantive relief sought was as follows:

*“a. Issue a Writ. Order or Direction in the nature of Certiorari or*

*any other appropriate writ, order or direction quashing the notification dated 11.08.2019 issued by the Respondent University in as much as it fails to provide any days/time period to the colleges/institutions of the Petitioner Association to fill up the vacant seats”*

70. The third writ petition i.e. W.P. (C) 1115/2019 was filed by candidates/students numbering 246 in all. These were students who claimed that though they had cleared the common entrance examination and had been ranked according to merit, they could not secure admissions as *via* 11.08.2019 and 14.08.2019 notifications, the entire counselling process concluded on 16.08.2019.

70.1. A careful perusal of the petition would show that none of the petitioners who are party to the captioned petitions (save and except two petitioners, i.e. Ms. Madhavi Pal and Ms. Sakshi Mohan Pandey) were before the Supreme Court.

70.2. Furthermore, there was no assertion that they had participated in the 6<sup>th</sup> round of counselling (which comprises four rounds of regular counselling and two rounds of spot counselling). It is in this backdrop that the following substantive reliefs were sought for by the petitioners in ***Rupa Kumari***’s case:

*“a. Issue a Writ of Mandamus or any other Writ, Order or Direction quashing the notifications dated 11.08.2019 and 14.08.2019 issued by the Respondent University in as much as it fails to provide any days/time period to the Petitioners to seek admission against the vacant seats.*

*b. Allow the Petitioners and similarly placed students to seek admission against the vacant seats.*

*c. Direct the Respondent No. 1 University to undertake admissions for the vacant seats.”*

70.3. A perusal of the counter-affidavit filed by the University in ***Rupa Kumari***'s case would show that while it made general averments that some of the petitioners had participated in the regular counselling rounds, no specific details and material particulars were furnished.

70.4. In the counter-affidavit filed by University before this court, a reference has been made to the aforementioned two petitioners who are parties to W.P. (C) 12151/2019. These two petitioners were also arrayed as petitioners in ***Rupa Kumari***'s case at Sl. No. 234 & 235 respectively.

70.5. Furthermore, in W.P. (C) 12112/2019 challenge is laid to the notifications dated 7.08.2019 and 11.08.2019, *albeit*, on different grounds.

70.6. It may also be relevant to note that in ***Rupa Kumari***'s case, the Supreme Court, while dismissing the petition *in limine*, passed the following order:

*“The writ petition is dismissed.”*

70.7. In W.P. (C) 1028/2019, the Supreme Court passed the following order, while dismissing the petition on 16.8.2019:

*“We find no merits in this writ petition. The petition is liable to be dismissed being bereft of merits.*

*The Writ Petition is, accordingly, dismissed.*

*Pending interlocutory application(s), if any, is/are disposed of.”*

70.8. Likewise, while dismissing W.P. (C) 1038/2019, the Supreme Court passed the following order:

*“Heard the learned Counsel appearing for the parties.*

*We do not find any merit in the Writ Petition, which is accordingly dismissed.”*

70.9. As noticed above, W.P. (C) 1028/2019 and W.P. (C) 1038/2019 did not array candidates/students as parties. The issue raised therein are not

issues which are either directly or substantially up for consideration in the captioned petition. No candidate was party to these petitions.

71. Insofar as ***Rupa Kumari's*** case is concerned, the petitioners before me, save and except two petitioners i.e. Ms. Madhavi Pal and Ms. Sakshi Mohan Pandey, were not parties before the Supreme Court.

71.1. The issue raised therein concerned, as noticed above, the purported failure on the part of the University in following the time schedule given in ***Parshavanath Charitable Trust*** case.

71.2. The petitioners, in that case, challenged the notification dated 11.08.2019 and 14.08.2019 on the ground that they failed to provide enough time to seek admission against vacant seats.

71.3. The contention raised before me is that the students already stood admitted before the cut-off date in the regular rounds and that their admissions were cancelled or denied merely because they could not pay the balance academic fee in time.

71.4. Therefore, the issue which arises for consideration in the captioned matters may have arisen incidentally or collaterally in ***Rupa Kumari's*** case, but it was not, to my mind, either directly and/or substantially in issue before the Supreme Court.

71.5. Besides the fact that except for two petitioners, none of the others before me were parties before the Supreme Court. The candidates/students who were before the Supreme Court cannot be treated as privies of the petitioners before this Court.

72. I may also indicate herein that one set of the petitioners who are before me in W.P. (C) 10905/2019 had filed a Special Leave Petition No. 29256/2019 against the interlocutory order dated 02.12.2019 passed by the

Division Bench of this Court in CMA No. 51721/2019 in LPA 763/2019. The Division Bench had stayed the interlocutory order dated 17.10.2019 in W.P. (C) 10905/2019. The Supreme Court, while dismissing the SLP, directed that the writ petition be decided as expeditiously as possible.

73. A perusal of the SLP paper book would show that the appeal filed by the University adverted to the earlier proceedings initiated by SFEA and Rupa Kumari.

73.1. Therefore, in my opinion, having regard to the foregoing, these petitions are maintainable. The preliminary objection taken by the University on this score is, thus, rejected.

## **II. Can non-payment of balance academic fee be equated with non-reporting?**

74. The thrust of the arguments advanced on behalf of the University is that if a candidate was allotted a seat in the spot counselling rounds and he had not paid the part-academic fee, he would necessarily fall in the category of those candidates who had not reported.

74.1. To appreciate this submission advanced on behalf of the University, one would have to examine the scheme for admission as forged by the University which finds mention in Chapter 11 of the Admission Brochure and the clauses of the notifications issued by the University between 07.08.2019 and 14.08.2019?

74.2. Chapter 11 of the Admission Brochure sets down the procedure that the University claimed it would follow for those candidates who sought admittance to any one of the 36 programmes that it had to offer.

74.3. It was made clear that the counselling procedure would follow the

“*online*” mode. Chapter 11 was divided into several parts which included the following parts:

- (i) Clause 11.1: General instructions;
- (ii) Clause 11.2: Submission of counselling participation fee;
- (iii) Clause 11.3: Registration;
- (iv) Clause 11.4: Choice filling;
- (v) Clause 11.5: Result/allocation of seats in every round;
- (vi) Clause 11.6: Freezing of allotted seats after every round;
- (vii) Clause 11.7: Withdrawal and fee refund after online rounds of counselling;
- (viii) Clause 11.8: Last round of allotment of seats for online counselling;
- (ix) Clause 11.9: Sliding of allotted seat after last round of online allotment of seats;
- (x) Clause 11.10: Reporting of candidates to the allotted institute/college;
- (xi) Clause 11.11: Spot counselling and;
- (xii) Clause 11.12: Filling of seats (if any) after spot counselling.

74.4. A perusal of the aforementioned clauses and their respective sub-clauses would show that there was no delineation of the number of online counselling rounds that the University would hold. Thus, a candidate who had qualified the common entrance exam and was possessed of the minimum eligibility criteria prescribed for the programme that he/she sought admission in, he/she was required to pay a participation fee of Rs. 1000/- for having his/her application registered for being considered for admittance to the concerned programme.

74.5. Importantly, for the purposes of pruning, each candidate after he/she was registered, had to fill choices from the list of possible combinations offered by the University in the form of institutes/colleges and courses in order of his/her preference. Candidates who did not fill in their choices were not to be considered for allotment of a seat.

74.6. Importantly, this condition, like other conditions to which I would be making a reference hereafter, did not apply to a candidate who participated in the spot counselling rounds. Thus, a candidate who did not pay the participation fee of Rs. 1000/-, or who had paid the participation fee of Rs. 1000/- and had not registered, or having been allocated a seat in any round had not paid the part-academic fee of Rs. 40,000/- (which was again compulsorily payable after allotment of seat), or upon allotment of a seat, had paid part-academic fee of Rs. 40,000/- but had withdrawn his/her admission was eligible to participate in the spot counselling round.

74.7. Therefore, the Admission Brochure indicated to the eligible candidates that there would be a set of usual rounds of counselling (which the University describes as “normal” rounds of counselling), in which, once a seat was allotted, the candidate was required to pay the part-academic fee of Rs. 40,000/- whether or not he desired the seat if he wished to participate in the subsequent usual/normal rounds of counselling.

74.8. In addition, thereto, the candidate was told that he/she would also lose his/her claim to the allotted seat if he/she did not pay the part-academic fee of Rs. 40,000/-. Once the candidate paid part-academic fee of Rs. 40,000/-, *via* the prescribed mode, he/she could generate an admission fee receipt only in that particular round. The aforesaid aspects, in essence, emerge upon perusal of various sub-clauses which fall under Clause 11.1 to Clause 11.5

of the Admission Brochure.

74.9. The University, thus, *ensured* that once a candidate registered for participation in the usual/normal counselling rounds, he/she paid part-academic fee of **Rs. 40,000/-** before he/she could move further.

75. Thus, once a seat was allotted to a candidate and he/she had paid part-academic fee of Rs. 40,000/-, he/she had three choices available with him/her. Firstly, he/she could freeze the seat allotted to him/her by clicking the freeze option available in his/her account on the web-portal within the prescribed period or, second, if he/she wanted an upgradation, the candidate could ignore the allotment made by the University which would entail that he/she would move to the next round where he/she would be allotted, automatically, a seat in the next round subject to availability. This option had its consequences, as in, once the candidate chose not to freeze the seat allotted to him/her, he/she was not allowed to retain that seat.

75.1. The third option which was available to the candidate was of withdrawing from the admission process altogether. If a candidate wished to avail of this option, he/she could click the withdrawal option available in his/her account on the web-portal. In case the candidate withdrew, he/she was not considered in the subsequent usual/normal rounds of online counselling. However, even such a candidate i.e. a candidate who withdrew from the usual/normal counselling process could participate in the spot counselling rounds.

75.2. Thus, the candidates who had withdrawn, or had frozen their seat but not paid part-academic fee of Rs. 40,000/- and did not fulfil the eligibility criteria were not allowed to participate in the subsequent rounds of counselling. The vacancies available, on this score, were considered for

allotment in the subsequent rounds.

75.3. After the last round of usual/normal rounds of online counselling was over, the seats which were distributed region wise and category wise, were to be converted into unreserved category seats after seats were allotted for reserved categories. These seats were then considered under a category known as "*sliding round of online counselling*".

75.4. The sliding round of online counselling was available only to those candidates who had been allotted a seat and had paid part-academic fee of Rs. 40,000/- but had neither withdrawn their admission nor frozen their seat allotted to them. The candidate who did not wish to participate in the sliding round and had paid part-academic fee of Rs. 40,000/- was permitted to freeze his/her allotment as well.

75.5. However, after the sliding round of counselling was over, if a seat was allotted to a candidate, he/she was required to report to the concerned institute/college for verification of documents and for payment of balance amount of fees (if any).

75.6. Importantly, the candidates were required to report to the allocated institute/college if he/she was allotted a seat in the sliding round, or retained a seat in the earlier round or was upgraded to a higher choice of preference and had made payment of part-academic fee of Rs. 40,000/- only after the sliding round of online seat allotment was over. At this stage, the candidate was required to generate a Provisional Admission Slip along with the enrolment number.

75.7. The candidates were required to report and join respective schools/colleges with the following documents.

a) Admission Slip

- b) Provisional Allotment Letter
- c) Academic Fee Receipt
- d) Necessary record for verification of documents

75.8. At this juncture, the candidates were also required to pay the balance amount of fee (if any), as prescribed, failing which, their admission would stand automatically cancelled.

75.9. After this stage, the institutes/colleges were required to send the status of reported and non-reported candidates to the University.

76. The seats which remained vacant after the sliding round and those which fell vacant due to non-reporting were to be considered for spot counselling rounds. Importantly, the spot counselling round had to be conducted **by 31<sup>st</sup> July** of the given admission year.

76.1. Notably, candidates who reported to the allocated institutions and whose names were reflected in such lists submitted by institutes/colleges under the heading reported/admitted were categorized as "**admitted students**". In case the candidates were desirous of withdrawing or cancelling their admission and seeking refund of the fee, they could do so, even at this stage, after following the procedure prescribed by the University.

76.2. As per Clause 11.11(1) of the Admission Brochure, **spot counselling had to be conducted only via offline mode** at the centres designated by the University and that too **between 01.08.2019 and 10.08.2019**.

76.3. Spot counselling round was necessarily to be held only if seats were found vacant after the normal and/or usual rounds of counselling and sliding round of online counselling was over. If eligible candidates were desirous of participating in the spot counselling round, they were once again required to deposit a separate non-refundable and non-transferable participation fee of

Rs. 2,000/-

76.4. The seats which were considered for admission in the spot counselling rounds were treated as unreserved. All candidates who had qualified the common entrance exam but had not taken admission in the normal and usual rounds of counselling or in the sliding rounds of counselling were eligible to participate in the spot counselling round against available vacant seats. In effect, all candidates, whether or not they had registered for participation in the earlier normal and usual rounds, or those who had registered and had paid a participation fees of Rs. 1000/- but had not been allocated a seat or those who had registered and paid participation fees of Rs. 1000/- and also paid part-academic fee of Rs. 40,000/- or those who had registered, paid registration fee of Rs. 1000/-, paid part-academic fee of Rs. 40,000/- and paid the balance academic fees as prescribed could participate in the spot counselling round.

76.5. Spot counselling round was thus, in a manner of speech, a free-for-all round, to enable candidates to try their luck at securing for themselves, seats, as long as they had qualified the common entrance exam and were possessed of minimum eligibility qualifications. The important distinction between them and those candidates who had been allotted seats in the earlier rounds of counselling and had paid part-academic fee of Rs. 40,000/- to confirm their admission in any institute/college and had also reported to the concerned institute/college running under the aegis of the University was that the latter set of candidates were to be treated as "**admitted candidates**" at the time of spot counselling. Such candidates i.e. admitted candidates, if they were desirous of participating in the spot counselling round, they were required to pay a transfer fee of Rs. 5000/-. The admitted candidates were

required to be considered for admission in the spot counselling round only as per their rank. If, for some reason, they did not appear at the time of counselling, they were not allowed to participate in any further rounds. This condition was based on the premise that the University would adhere to the schedule set out in the Admission Brochure. Seats which fell vacant on account of this circumstance were to be offered to candidates participating in spot counselling holding ranks lower than such candidates i.e. transferred/admitted candidates. Such admitted/transferred candidates were required to have the part-academic fee of Rs. 40,000/- paid by them adjusted during counselling. In case, a change of institute/college occurred qua such admitted/transferred candidates, then, the institute/college from which such admitted/transferred candidates moved, was to refund the balance academic fee (in any) paid i.e. the fee which such candidate had paid directly to the transferor institute/college. In such eventuality, the admitted/transferred candidate was required to pay the balance academic fee to the institute/college to which he/she was transferred.

76.6. Pertinently, the admitted candidate i.e. a candidate who had been allotted a seat and had paid part-academic fee of Rs. 40,000/- and reported to the concerned institute/college and thereafter withdrew his/her admission as per prescribed procedure was also eligible for spot counselling. This aspect of the matter emerges clearly upon perusal of sub-clause (7) and (8) of Clause 11.11<sup>3</sup> of the Admission Brochure.

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<sup>3</sup> “**11.11 Spot Counselling**

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*7. The candidates who are allotted seat in rounds of online counselling and have paid the part Academic Fee of Rs 40,000/- to confirm admission in any institute/ college and have also reported to the concerned University School of Study / college / institutions will be*

76.7. What is required to be noticed is that there is a category of candidates created who are classified as admitted candidates who fulfilled the following criteria.

- (i) Had been allotted a seat in the earlier round of online counselling and had paid part-academic fee of Rs. 40,000/-
- (ii) Had reported for admission to the concerned institute/college running under the aegis of the University.

76.8. These admitted candidates, as noticed above, were required to pay, apart from Rs. 2000/- which was the participation fee fixed for spot counselling, a transfer fee of Rs. 5000/-. Thus, if in the spot counselling, the admitted/transferred candidates obtained an upgraded choice of course, *albeit*, in the same institution, no adjustment was required to be made. If, however, a change of institute/college occurred, Rs. 40,000/- as paid as part-academic fee was required to be adjusted and the candidate could seek refund of the balance academic fee (if any) paid to the transferor institute/college with an obligation to pay the balance academic fee (if any)

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*treated as “admitted” at the time of Spot Counselling. Such candidates, if they desire to participate in the “Spot Counselling” shall be required to pay a transfer fees of INR 5000/=, these candidates shall be considered as per their rank only, if they do not appear at the time of counselling for their rank, they shall not be allowed to participate. Moreover, the seats thus vacated by these candidates shall be offered to candidates participating in “Spot Counselling” with lower rank as compared to the candidates thus transferred. For such “transferred” candidates, the part academic fees paid by the candidate of INR 40000/= shall be adjusted during counselling. If a change of institution / college occurs of such candidates, then the institution / college from which the candidate is being transferred shall refund the balance fees paid (if any), that is the component of the fees paid by the candidate at the institution directly to the candidates on application by the candidate, and the candidate shall have to pay the balance fees (if any) of the institution to which the candidate is transferred as per schedule to be notified by the candidates.*

*8. Any candidate, who was admitted in any round and subsequently withdrawn as per procedure, will be eligible to participate in the Spot Counselling.”*

to the transferee institute/college as per the notified fee schedule.

77. Thus, in the light of the procedure prescribed in the Admission Brochure, let me examine as to where each of the 23 candidates fall. Material particulars of each of the petitioners are set out in a tabular form given in paragraph 36 above.

78. A perusal of the tabular chart would show that the candidates would, broadly, fall in the following categories.

(i) First, those who had been allotted seats and had paid part-academic fee of Rs. 40,000/- and balance academic fee as well before commencement of the 5<sup>th</sup> round or first of the two rounds of spot counselling.

(ii) Second, those candidates who had paid, upon allotment of a seat, part-academic fee of Rs. 40,000/- but paid the balance academic fee after the commencement of the 5<sup>th</sup> round i.e. the spot counselling round.

(iii) Third, candidates who had, upon allotment of seat, paid part-academic fee of Rs. 40,000/- and also the balance academic fee but had withdrawn before the commencement of the spot counselling round.

(iv) Fourth, candidates, who, after allotment of seat, had paid part-academic fee of Rs. 40,000/-, and the balance academic fee after the cut-off date prescribed by the University i.e. 16.08.2019.

(v) Fifth, candidates who had been allotted a seat and paid part-academic fee of Rs. 40,000/- but had not paid the balance academic fee as they wished to do so only after they had gone through the spot counselling rounds.

(vi) Sixth, candidates, who, after being allotted a seat in the usual/normal rounds, did not pay the part-academic fee of Rs. 40,000/-, and chose to participate straight away in the spot counselling round.

78.1. Insofar as the first category is concerned, the information given in tabular chart would show that the following candidates would stand covered.

<b>S. No.</b>	<b>Name of the petitioner</b>
1.	Bharat Kumar
2.	Srishti Kathait
3.	Aditya Bajaj
4.	Sahil Gupta
5.	Madhvi Pal
6.	Divij
7.	Ashish Kumar
8.	Junaid
9.	Nargis
10.	Jaskirat
11.	Shubham Mangla
12.	Sakshi Mohan Pandey
13.	Aditya Aggarwal
14.	Snehil Shrey
15.	Mallika Malhotra
16.	Aditya Tripathi
17.	Aryan Singh

78.2. There is no dispute that the University conducted four rounds of usual/normal counselling, though, as indicated above, the number of rounds was not prescribed in the Admission Brochure.

78.3. As a matter of fact, the University has claimed that the 4<sup>th</sup> round was the online sliding round of counselling after the last round of online counselling was over. In other words, according to the University, the usual/normal rounds of online counselling were only the first three rounds,

while the 4<sup>th</sup> round was the online sliding round of counselling. In practical terms, nothing, in my view, would turn on this classification, except, that the sliding round of counselling would deal with seats which remained vacant or fell vacant upon candidates not paying the part-academic fee of Rs. 40,000/-.

78.4. A conjoint reading of Clause 11.10(3) and Clause 11.11(1) would show that the usual/normal rounds of counselling which included the sliding round counselling had to get over by **31.07.2019**. The University was required to conduct spot counselling between **01.08.2019 and 10.08.2019** so that at least 4 clear days were available to the candidates for fulfilment of admission formalities which included payment of balance academic fee.

78.5. The cut-off date effectively ought to have been 14.08.2019 as 15.08.2019 was a national holiday. 15.08.2019 could not have been crossed, as that date even according to the University, was sacrosanct as it has been prescribed as the cut-off date by the Supreme Court in ***Parshavanath Charitable Trust*** case. More so, in the counter-affidavit filed by the University in the Supreme Court in ***Rupa Kumari***'s case, it was projected that the admissions stood completed on 14.08.2019. The University issued a notification on 05.08.2019 pertaining to the sliding round, which in effect, was the 4<sup>th</sup> round of counselling, according to the University, which allowed for payment of balance academic fee till 09.08.2019.

78.6. The University, instead, commenced the spot counselling process contrary to what was projected in the Admission Brochure on 07.08.2019 and that too *via online* mode. The result of 5<sup>th</sup> round which was first of the two rounds of spot counselling was declared on 11.08.2019.

78.7. Thus, having regard to the fact the candidates who had been allotted a seat and had paid both part academic fee of Rs. 40,000 and the balance

academic fee of the concerned institute/college up until 09.08.2019 had to be treated as admitted candidates for the purposes of sub-clause (7) of Clause 11.11 of the Admission Brochure. These were candidates who were wanting to participate in the spot counselling rounds for upgradation *vis-a-vis* their choice of course and/or institute/college. The candidates who would fall in this category were only seeking, if at all, a transfer in terms of sub-clause (7) of Clause 11.11 of the Admission Brochure unless prior to commencement of the spot counselling rounds, they had sought to withdraw their admission.

78.8. Candidates who fell in this category, their candidature could, in the spot counselling round, not have been cancelled on the ground of non-payment of balance academic fee as they were to be treated as admitted candidates in terms of sub-clause (7) of Clause 11.11 of the Admission Brochure.

78.9. The University, for the first time, in the notification dated 11.08.2019, appended the following note.

*“NOTE: AFTER DECLARATION OF RESULT OF SPOT COUNSELLING THE ALLOCATED CANDIDATES MANDATORY HAS TO REPORT TO THE ALLOCATED INSTITUTIONS FOR VERIFICATION OF DOCUMENTS AND PAYMENT OF BALANCE AMOUNT OF FEES AS PER OFFER LETTER OF RESULT OF SPOT COUNSELLING*

*FAILURE TO REPORT AT THE INSTITUTE/COLLEGE ALLOCATED IN SPOT COUNSELLING SHALL LEAD TO CANCELLATION OF ADMISSION ALLOCATED IN THIS ROUND AS WELL AS PREVIOUS ALLOCATED ADMITTED SEAT.”*

79. To my mind, this note cannot apply to those candidates who were classified as admitted candidates as per sub-clause (7) of Clause 11.11 of the Admission Brochure.

79.1. The candidates, who, in my opinion, classify as admitted candidates under sub-clause (7) of Clause 11.11 of the Admission Brochure would be those who have paid the part academic fee of Rs. 40,000/- and the balance academic fee on or before 09.08.2019. The tabular chart given in paragraph 36 above would show that the following candidates would fall in the class of admitted candidates.

<b>S. No.</b>	<b>Name of the petitioner</b>
1.	Bharat Kumar
2.	Srishti Kathait
3.	Aditya Bajaj
4.	Sahil Gupta
5.	Madhvi Pal
6.	Divij
7.	Ashish Kumar
8.	Junaid
9.	Nargis
10.	Jaskirat
11.	Shubham Mangla
12.	Sakshi Mohan Pandey
13.	Aditya Aggarwal
14.	Snehil Shrey
15.	Mallika Malhotra
16.	Aditya Tripathi
17.	Aryan Singh

79.2. This would bring us to what one construes of the note appended to the notification dated 11.08.2019 on which reliance is placed on behalf of the University to buttress its argument that the candidate would be shown as having not reported and the allotment of seat made to him would stand cancelled if he or she did not pay the balance academic fee. A careful perusal of the note would show that it has the following ingredients.

(i) Firstly, once the result of spot counselling was declared, which in this

case was on 11.08.2019, the candidate was mandatorily required to report to the allocated institution for the following purposes.

- a) Verification of documents
- b) For payment of balance academic fee as per the "*offer letter*" generated pursuant to the result of the spot counselling.

(ii) Secondly, failure to report at the institute/college allocated in spot counselling would lead to cancellation of the admission granted in the spot counselling as well as a seat allotted in the previous round.

79.3. A plain reading of the note would show that the only payment the candidate had to make towards balance fee at the time of reporting to the allocated institute/college was that which was shown in the *offer letter*. Furthermore, the candidate was also required to have his/her documents verified at the time of reporting to the allocated institute/college.

79.4. Besides this, the note goes on to say that failure to report would lead to cancellation of admission of the allocated seat as well as the seat already allotted to a candidate.

79.5. Therefore, the condition in the note which required verification of documents could not have applied to admitted/transferred candidates as they had deposited their documents, in original, with the transferor institute.

79.6. Insofar as the candidates who entered the fray for the first time in the 5<sup>th</sup> round of counselling i.e. the first of the two rounds of spot counselling or those who had been in the fray but not paid the part-academic fee of Rs. 40,000/-, even though they had been allotted a seat in the first four round of counselling, and therefore not deposited their original documents. as per the note. would be required to report physically along with their original documents, pay the balance amount of fee as per the offer letter on the

premise that after the declaration of the spot counselling result, they would have paid the part-academic fee of Rs. 40,000/- . To be noted, this aspect of the matter is not adverted to in Clause 11.11 of the Admission Brochure.

79.7. The candidates who fall in this category, according to the University, had their admissions to the seat allocated to them in the spot round of counselling cancelled on account of the fact that they had not paid the balance amount of fee (if any) as per the notice available on the University's website even though other requirements stood fulfilled, as per the notifications dated 11.08.2019 and 13.08.2019. These requirements being, deposit of part-academic fee of Rs. 40,000/- and being in possession of original documents for the purposes of verification by the concerned institute/college.

79.8. This argument of the University is based on the following provision in 11.08.2019 notification and also the following provision made in the 13.08.2019 notification under the activity schedule.

***“Reporting of candidates to the allotted Institute/college***

*The candidates are required to report and join the respective Schools/College with the Provisional Offer/Allotment Letter, the Academic Fee Receipt and the necessary record for verification of documents at the Schools/Institution/College. The candidates are required to pay the balance amount of fees (if any), as per Notice available on University website [www.ipu.ac.in](http://www.ipu.ac.in), or [www.ipuadmissions.nic.in](http://www.ipuadmissions.nic.in) failing which the admission shall be automatically cancelled and the candidate will lose [sic: lose] any claim to the allotted seat.”*

80. The argument of the University that mere delay in payment of balance amount of fee would result in candidate being declared as not-reported and as a consequence thereof lead to the cancellation of his/her admission cannot

be accepted for the following reasons.

- (i) Firstly, no such condition was provided in Clause 11.11 of the Admission Brochure.
- (ii) Secondly, there is a dissonance between the condition captured under the heading reporting of candidates to the allotted institute/college and the note appended at the note.
- (iii) Thirdly, the condition of payment of balance amount of fee does not stipulate that if the fee is not paid on a *particular date*, it would lead to cancellation of the admission even if other conditions are fulfilled. That the candidate was obliged to pay the balance amount of fee which is the last limb of the three conditions prescribed under the heading reporting of candidates to the allotted institute/college was not the same thing as saying that if it was not paid on that very date, it would lead to cancellation of the admission.

#### **Short timelines led to inequitable results: -**

80.1. The difficulty with accepting this construction, which is propounded by the University, in respect of candidates falling in all categories i.e. admitted/transferred candidates (as discussed above), candidates who joined the spot counselling fray for the first time and candidates who had participated in the rounds of counselling prior to the spot counselling rounds but had not paid the part-academic fee of Rs. 40,000/- would be particularly harsh as the notification between 11.08.2019 and 14.08.2019 in short space and at odd hours at times as noticed hereinabove. The last notification which is notification dated 14.08.2019 was uploaded, even according to the University on that date at 11:31 P.M.

80.2. Had the University adhered to the timeline set forth in the Admission Brochure, which mandated that the spot counselling would end on 10.08.2019, then, perhaps, the candidates could have comfortably fulfilled the necessary requirements which included the requirement of payment of balance academic fee by 14.08.2019.

80.3. The University realizing that the admission process had got delayed tried to insert conditions *via* notifications which led to impractical and harsh outcomes. The candidates who would have seen their results on 11.08.2019 and were clear that they did not wish to participate in the 6<sup>th</sup> round (i.e. the second round of spot counselling) realized that they could not deposit the balance academic fee on 12.08.2019 as the banks/institute/colleges were closed on account of Eid. The window for depositing the fee (which was, in effect, made available to them, in the first instance, *via* notification dated 11.08.2019) was between 09:30 A.M. to 06:30 P.M on 13.08.2019. Thereafter, time for depositing the balance academic fee was extended till 08:00 P.M. on 13.08.2019 (notification No. IPU-7/Online Counselling/2019/13342 uploaded at 05:11 P.M. at 13.08.2019) and finally till 11:00 A.M. on 14.08.2019 (notification No. IPU-7/Online Counselling/2019/13345 uploaded at 10:32 P.M on 13.08.2019).

80.4. For candidates who wanted to wait till the 6<sup>th</sup> round (i.e. the last of the two spot counselling rounds was over) before they froze their choice would have known of the result only when it was uploaded at 11:31 P.M. on 14.08.2019. These candidates were given time to pay the balance academic fee only upto 5:00 P.M. on 16.08.2019 as 15.08.2019 was a national holiday.

80.5. The condition imposed in the notification that non-payment of

balance academic fee would lead to cancellation of seats was for the benefit of the institute/college and would have not impacted any candidate who wanted to get admitted but whose name was not in the result declared on 14.08.2019 at 11:31 P.M. as the admission process stood closed on that date.

#### **Admission of 20 candidates by the University after 16.08.2019: -**

80.6. Furthermore, what lends support to this conclusion is the information, *albeit* incomplete, provided *via* additional affidavit dated 24.12.2019 filed on behalf of the University in respect of 20 candidates whose admissions were restored in various colleges/institutes by the University upon recommendation of a Committee constituted by it for this purpose. The Committee, it appears, had made its recommendation *vide* minutes of the meeting dated 24.09.2019 [appended as Annexure R-1/11 along with University's additional-affidavit at page 204 in W.P. (C) 10905/2019]. Though, the minutes of the Committee were filed, Annexure A I therein was not filed. This led to a direction being issued on 19.12.2019 for submission of details with regard to those 20 candidates. The details given against each candidate include, *inter alia*, details under the following four heads.

- (i) Letter of mistake admitted by the institute
- (ii) Paid Balance Fees at allotted Institute
- (iii) Transaction of Payment of Balance Fees in account of Institute
- (iv) Remarks

80.7. A perusal of the chart appended to affidavit dated 24.12.2019 would show that in case of Paarth Jain, Jayant Goel, Kabeer Grover, and Vinay Oberoi, the amount paid as balance academic fee is not set out. In some cases such as Harsh Sharma, Kabeer Grover (whose name is indicated

hereinabove as well), Ratul Das, and Priyanka Agarwal, balance academic fee has been accepted in cash. As a matter of fact, in the case of Priyanka Agarwal, the dean of the concerned college i.e. USLLS had forwarded her case “***without any comments***” and contrary to all stipulated norms, and her balance academic fee was accepted “***in cash***” by the “***University Account Branch***” on 16.08.2019.

80.8. Insofar as Mr. Jayant Goel is concerned, against amount of balance academic fee paid, it is shown that a demand draft of Rs. 7,000 dated 16.08.2019 was deposited. Interestingly, he had approached this Court by way of W.P. (C) 10732/2019. This petition was dismissed as withdrawn on 26.11.2019, based on the representation that his admission had been regularized by the University. A perusal of the writ petition would show that his case was that he had not, once again, paid the balance academic fee after being allotted an institute/college in the spot round of counselling. The only amount he had paid was Rs. 7,000/-.

80.9. In case of Ananya Pandey and Manish Kumar, it is stated that balance academic fee was paid in the 4<sup>th</sup> round on 07.08.2019 amounting to Rs. 30,000 and on 08.08.2019 amounting to Rs. 95,300 respectively. What emerges from the truncated information supplied by the University is that Ananya Pandey had attempted an upgradation and paid a fee of Rs. 7000/- on 16.08.2019. Likewise, Manish Kumar had also paid an upgradation fee of Rs. 7,000/- on 16.08.2019.

81. Therefore, if the University’s argument is to be accepted, whatever seat was allotted to these before the start of the 6<sup>th</sup> round, those seats would have stood cancelled and if they were admitted pursuant to upgradation in the 5<sup>th</sup> or 6<sup>th</sup> round, they would have to pay an additional sum towards

balance academic fee to the concerned institute/college even if the upgradation was made in the same college/institute, *albeit*, in a different course.

82. In the case of Prateek Upadhyay, Jatin Sachdev, Ratul Das (also one of the candidates whose name is referred to above), and Rahul Rawat, while the dates of payment of balance academic fee are given, neither the amounts are indicated nor it is stated as to the round in which seat were allotted to them.

83. In my opinion, the information given by the University *vis-a-vis* these 20 candidates, in the very least, establishes that the non-payment of balance academic fee could not have resulted in cancellation of admission.

### **III. Recommendations of the Public Grievances Commission (PGC): -**

84. In the course of the arguments, it was brought to my notice that certain candidates had approached the PGC for relief which included a set of the petitioners before this Court. My attention was drawn to the PGC's order dated 31.10.2019.

84.1. A perusal of the order of the PGC would show that it sought to highlight the fact that the schedule for the admission process set by the Supreme Court in *Parshvanath Charitable Trust*'s case, according to it, was severely truncated. **The PGC was of the view that there was a delay of 25 days in the 1<sup>st</sup> round of counselling and a delay of 23 days in the 2<sup>nd</sup> round of counselling.** This apart, the PGC also observed that 16 candidates who had been considered for admission, their particulars had not been furnished to it. The PGC also noted that most of the candidates belonged to *poor families* who could not take recourse to litigation and that fee was

refunded in certain cases without volition of candidates and/or their parents. These observations are found in paragraph E of the order dated 31.10.2019<sup>4</sup>.

84.2. It is in this context that information with regard to the 20 candidates, who I was told were given admission, after the cut-off date based on recommendations of the Committee constituted by the University was sought.

#### **IV. The cut-off date argument: -**

85. The argument of the University that no leeway can be given *vis-a-vis* the petitioners as they sought to deposit the balance academic fee after 05:00 P.M. on 16.08.2019 is flawed for the following reasons.

(i) The cancellation of admission of the candidates was linked, for the first time, *via* notifications issued between 11.08.2019 and 14.08.2019 to the deposit of balance academic fee. The reporting for

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<sup>4</sup>“E. The Commission during hearing on 16/10/2019 had sought list of 16 students out of list of 74 students whose case were being submitted for the approval of admission by University, however, University official vide letter dated 18/10/2019 submitted a list of three students whose cases had been considered and were approved for admission. One of the student Jayant Goel in the list had already got the relief from the Hon’ble High Court of Delhi. The Commission will like to place it on record that during verbal telephonic conversation with Registrar of University, the Commission had conveyed unhappiness that only three out of list of 74 candidates have been approved whereas all others are similarly placed. The Commission was further informed by the Registrar of University that around sixteen more candidates are being considered for approval. The commission was assured that the complete list of candidates who were considered for continuing their admission and approved for continuing their admission will be made available to the Commission but it is very unfortunate that till date University has failed to provide such list to the commission. The Commission advised Joint Registrar admission that University must immediately process the cases for refund on most urgent where parents were seeking refund and also had advised not to forcefully refund the money in respect to candidates whose cases were being considered by PGC. It is highly unfortunate and objectionable that University has forcefully refunded the fees of the candidates who are aggrieved by action in denying these students to continue their admission and whose cases are being heard by PGC.”.

admission pursuant to declaration of results for spot counselling was linked to deposit of balance academic fee without indicating in the notification that if the fees was not deposited on that very date, it would lead to cancellation of admission.

(ii) Furthermore, the fact that the mode of deposit of balance academic fee was changed to *cash vis-a-vis* some candidates was an aspect which was not in public domain.

86. Therefore, in my view, these are not the cases where students are being given admission after the cut-off date prescribed in the *Parshvanath Charitable Trust* case. These are the candidates who joined the admission fray prior to the cut-off date. These are students who only seek restoration of their admission which was wrongly cancelled only on account of non-payment of balance academic fee *qua* which very narrow timelines had been fixed contrary to the schedule fixed in the Admission Brochure or that which was prescribed by the Supreme Court in *Parshvanath Charitable Trust* case.

86.1. The argument advanced on behalf of the University that out of 2036 candidates who were allotted a seat by way of upgradation in the 6<sup>th</sup> round, 1560 candidates were able to seek admission, in my opinion, is not a good enough answer as there would have been parents who were not in a position to lay their hands on funds in the prescribed timeline to seek admission for their wards.

86.2. Amongst the 23 candidates, 2 candidates are candidates who belong to EWS category. Three (3) candidates who were represented by Mr. Saharya have taken recourse to legal aid. The examples of these candidates itself tells a story about the implicit harshness in the timelines fixed and put

in place by the University for payment of balance academic fee. The University's response that the process of spot counselling got delayed and it was truncated on account of NOC not having been given by GNCTD would also not be a good enough answer for depriving petitioners, who are otherwise eligible for admission, only on account of their inability to pay their fees within the timeline set forth by the University.

86.3. The University's apprehension that this would open floodgates can be put at rest by confining the relief to those who have taken the trouble of approaching the Court and pressing their cause, which is, undoubtedly a genuine one. Depriving students, avenues for gaining knowledge and professional competence for the reasons given by the University, does not find favour with me. The argument advanced on behalf of the University that the candidates had participated in spot counselling based on the conditions given in the notification does not hold water for the reason that the candidates had practically no choice in the matter given the nth hour at which the notifications were issued. Their subsequent correspondence with the University has to be looked at in this light. Thus, given that they are before the Court and wanting their admission to be restored is good enough reason to accord them relief. Besides this, the fact that the notifications introduced conditions which were not in sync with Clause 11.11 of the Admission Brochure which dealt with spot counselling made the illegality immensely egregious. Clause 11.10 which preceded Clause 11.11 of the Admission Brochure had no bearing on the spot counselling rounds.

## **V. The impact of letters addressed to the University by 13 out of the 23 petitioners: -**

87. *Via* these letters, the University seeks to establish that the aforementioned petitioners had themselves admitted that they had either not deposited their balance academic fee or had not-reported to the allotted institute/college.

87.1. Let me, therefore, briefly deal with the averments made in the letters addressed by the aforementioned petitioners to the University. The language employed in these letters would show that the students were clutching at straws to hold on to whatever had fallen to their lot.

(i) Valence Kundra, in his letter dated 16.08.2019, pointed out that he had scored 68% marks in JEE (Mains). He had participated in the spot round of counselling and consequently allocated a seat in HMR Institute (CSE) in the first shift. Since he was asked to deposit Rs. 75,837/- towards balance academic fee, he did not freeze his seat as he was not wanting to take admission in the aforementioned institute/college. He was told that his documents would not be verified if the aforementioned amount was not paid. Person who were ranked below him in the JEE (Mains) had obtained admission. He averred that his financial position was not good.

(i)(a) To my mind, this was a clear case of linking deposit of fee to admission when Valence Kundra wanted to take a chance in the last round of spot counselling i.e. the 6<sup>th</sup> round. Seeking Rs. 75,000/- from a person when he wanted to go on to the next round i.e. the 6<sup>th</sup> round made no sense. He would have had to first cough up Rs.75,000/- in the 5<sup>th</sup> round and possibly the same amount in the 6<sup>th</sup> round if he had been upgraded. Certainly, this payment regime made no sense.

(ii) Aditya Aggarwal's letter to the University is dated 26.08.2019. In this letter, Aditya Aggarwal asserts that he obtained a seat in B.Tech (CSE) in JIMS on 07.08.2019. He further asserts that he participated in the spot counselling round where he was allotted Mechanical and Automation Engineering branch in MAIT. He further asserts that since he did not wish to join MAIT and wanted to continue with JIMS, he did not report to MAIT. He claims that he continued in JIMS between 19.08.2019 and 22.08.2019 when he was informed that his admission had been cancelled.

(ii)(a) Aditya Aggarwal falls in the EWS category. His case also falls under Clause 11.11 of the Admission Brochure in the admitted student category. As to why he did not report to MAIT has been attempted to be explained in the writ petition. While there is a certain amount of contradiction it is palpable that Aditya Aggarwal did not have the necessary funds available at short notice to block his seat in MAIT. It is evident that he approached JIMS which accommodated him and also accepted transportation fee from him. Cancelling Aditya Aggarwal's seat in both institutions when he had paid part-academic fee as well as the balance academic fee without due opportunity is clearly unfair. This is, more so, as he claims that he was made to write the letter addressed to the University in a particular manner.

(iii) Vivek Dubey in his letter dated 17.08.2019 states that he obtained admission in AIACTR-ECE in the sliding round. Thereafter he claims to have participated in the spot counselling round and obtained a seat in Chemical Engineering in USCT. He says that his POL did not mention that he had to pay the balance academic fee and therefore he was late in paying the same. His admission was, accordingly, cancelled in both institutes/colleges.

(iii)(a) This was again a case where reporting was linked to payment of balance academic fee. Vivek Dubey fell in the category of admitted candidates as per Clause 11.11 of the Admission Brochure.

(iv) Aayush Sharma *vide* letter dated 27.08.2019 asserted that he had been allotted JIMS in the spot round of counselling. He sought intercession for shifting his admission to MAIT due to health problems and family issues.

(iv)(a) This letter does not, in any manner, dilute the stand of Aayush Sharma.

(v) Monu Sharma *vide* an undated letter informed the University that he had been allotted B.Tech (ME) in MAIT in the first round of spot counselling i.e. the 5<sup>th</sup> round and paid the balance academic fee. In the second round of spot counselling i.e. the 6<sup>th</sup> round, he was allotted BPIT (ECE) 1<sup>st</sup> shift. It is asserted that because he could not report due to critical condition, his admission in both institutes/colleges has been cancelled.

(v)(a) Clearly, Monu Sharma had paid part-academic fee of Rs. 40,000 and balance academic fee of Rs. 95,300/- in the 5<sup>th</sup> round. While he did not report in the 6<sup>th</sup> round when he was allotted BPIT due to unexplained critical conditions. One of the reasons palpably was the requirement to again deposit a huge amount towards balance academic fee between 11:31 P.M. on 14.08.2019 and 4:00 P.M. on 16.08.2019 with 15.08.2019 being a national holiday.

(vi) Divij in his letter dated 22.08.2019 asserted that he was allotted a seat in BPIT in the 3<sup>rd</sup> round of counselling when he froze his seat and paid the entire academic fee. He further avers that he participated in the 5<sup>th</sup> round i.e. the first round of spot counselling for upgradation in which he did not succeed. He claims that he inadvertently did not check the web-portal for

updation in the 6<sup>th</sup> i.e. the second round of spot counselling in which he was allotted another institute i.e. MSIT. He says, consequently, both seats stood cancelled due to his “negligence”.

(vi)(a) Clearly, this case demonstrates the unfair impact of short timelines fixed by the University. As noted above, the result of 6<sup>th</sup> round i.e. the second round of spot counselling were uploaded only on 14.08.2019 at 11:31 P.M. *Vide* notification dated 14.08.2019, for the first time, candidates were told that they could deposit the balance academic fee till 04:00 P.M. on 16.08.2019 which was a date beyond the cut-off date prescribed by the Supreme Court i.e. 15.08.2019. Thus, unless the candidate was constantly watching the web-portal of the University or his mobile phone for SMSes, he would have missed the notification dated 14.08.2019.

(vii) Madhavi Pal in her letter dated 26.08.2019 asserts that she was allotted a seat in SRITE and thereafter allotted a seat in KIHEAT. She claims that she was not admitted to KIHEAT as she was unable to submit a demand draft.

(vii)(a) The record shows that Madhavi Pal was allotted an institute in every round including the 5<sup>th</sup> round. She had deposited both the part-academic fee and the entire balance academic fee once she was allotted a seat in SRITE in the 2<sup>nd</sup> round. She was, thus, a candidate who fell in the category of an admitted candidate whose admission could not have been cancelled for non-payment of balance academic fee. This case also flags the issue as to why in some cases there was insistence that the balance academic fee had to be paid only via banking instruments whereas the Committee has given admission to the candidates who have paid the balance academic fee in cash.

(viii) Srishti Kathait in her letter dated 23.08.2019 has averred that she was

allotted a seat in DME in the 3<sup>rd</sup> round of counselling. She has further averred that in the spot round of counselling she was allotted another college located in Ghaziabad and thus its location was not suitable for her.

(viii)(a) Srishti Kathait is also a candidate who not only deposited the part academic fee but also the balance academic fee when she was allotted a seat in DME. She falls in the category of admitted candidates. Therefore, her admission could not have been cancelled for non-payment of the balance academic fee upon allotment of seat in the spot counselling.

(ix) Ashish Kumar in his letter dated 19.08.2019 claims that he was allotted in the sliding round BPIT (ECE). He further claims that he paid the entire academic fee to BPIT. It is asserted by him that he participated in the spot round where he was allotted GBP GEC when he was unable to report due to some reasons.

(ix)(a) Clearly, apart from the fact that he falls in the admitted candidates category as per Clause 11.11 of the Admission Brochure. The record shows that he was allotted GBP GEC in the 6<sup>th</sup> round. This intimation was uploaded was uploaded via 14.08.2019 notification at 11:31 P.M. and also perhaps through mobile phone. As indicated above, 15.08.2019 was a national holiday. The petitioner had barely half a day available on 16.08.2019 to arrange for additional funds for payment of balance academic fee. This case also exemplifies how short timelines and lack of resources degraded the ability of candidates to seek admission in the newly allotted college.

(x) Junaid *vide* his letter dated 26.08.2019 claimed that he obtained admission in MAIT (EEE). He applied for participation in the spot round of counselling and was allotted a seat in USCT. He claims that he forgot to report.

(x)(a) The record shows that Junaid obtained admission in the 4<sup>th</sup> round of counselling in MAIT (EEE) when he paid the entire academic fee. Even though he participated in the 5<sup>th</sup> round, he was not upgraded. In the 6<sup>th</sup> round, he was allotted USCT. This communication was uploaded only vide notification dated 14.08.2019 at 11:31 P.M. as noted hereinabove. Junaid fell in the category of admitted candidates as per Clause 11.11 of the Admission Brochure. His candidature could not have been cancelled for failure to physically report because even if he had reported physically he would have not been in a position to deposit the original documents which according to him were lying with MAIT. His assertion that he forgot to report is clearly an act of desperation to hold on to the seat he was allotted in the earlier round.

(xi) Nargis vide letter dated 22.08.2019 asserted that she was allotted Meera Bai College in the 5<sup>th</sup> round i.e. the first round of spot counselling. She claims that she was allotted in the earlier round a seat in SIMS.

(xi)(a) the record shows that Nargis had been allotted a seat in SIMS in the 3<sup>rd</sup> round when she had paid the entire academic fee. She participated in the 5<sup>th</sup> round when her admission was cancelled for not reporting on time. Nargis fell in the category of admitted candidates. Her reporting would have made no difference as she was required to submit not only the documents in original but also deposit once again the balance academic fee. Since she had got admission in SIMS, she could not have even if she wanted retrieved the documents and the deposited fee in time and filed the same with Meera Bai College.

(xii) Ashish Kumar vide letter dated 16.08.2019 informed the University that he had been given admission in BPIT (ECE) at which point in time he

had paid the entire academic fee amounting to Rs. 1,20,800. He avers that he participated in the 6<sup>th</sup> i.e. the second round of spot counselling in GBPGECE (ECE). He says that due to some reasons he was unable to report.

(xii)(a) Ashish Kumar also fell in the category of admitted candidates. As indicated in the other cases, the results of the 6<sup>th</sup> round were uploaded only on 14.08.2019 at 11:31 P.M. The next day i.e. 15.08.2019 was a national holiday. For Ashish Kumar to report in terms of the requirement set up by the University involved obtaining original documents from BPIT and finding a new source of funds for paying, once more, the balance academic fee. Within the timelines given, it would have been extremely difficult if not impossible for Ashish Kumar to comply with the conditions prescribed by the University.

(xiii) Sakshi Mohan Pandey vide letter dated 16.08.2019 asserts that she was allotted a seat in B.Ed. course in SRITE. She participated in the spot counselling round at which point in time she was allotted a seat in another college and was told that she had to deposit a sum of Rs. 40,000/-.

(xiii)(a) The record shows that she was allotted a seat in the 1<sup>st</sup> round in RCIT. In the 2<sup>nd</sup> round she was allotted SRITE, which she continued to retain till the 5<sup>th</sup> round. She was thereafter allotted a seat in 6<sup>th</sup> round in KIHEAT. At the time when she was allotted a seat in SRITE in 2<sup>nd</sup> round, she had deposited the entire academic fee. The fact that she did not get upgradation till the 5<sup>th</sup> round would have led her to believe that she would have to make do with allotment of a seat in SRITE. The 6<sup>th</sup> round results having been uploaded only at 11:31 P.M. on 14.08.2019 obviously made it very difficult for her to shore up additional funds for blocking a seat by 04:00 P.M. on 16.08.2019 when 15.08.2019 was a national holiday.

### **Conclusion: -**

88. Candidates who have submitted both the part-academic fee of Rs. 40,000/- and the balance academic fee before the commencement of the spot counselling rounds had to be treated as admitted candidates under Clause 11.11 of the Admission Brochure. Their admissions could not have been cancelled only because, upon upgradation, they did not pay, once again, the balance academic fee within the time prescribed in the notifications to the institute/college concerned whether or not the upgradation brought about a change in the institute/college. Candidates who fall in this category are as follows.

<b>S. No.</b>	<b>Name of the petitioner</b>	<b>Admission will now be restored to the following institutes/colleges</b>
1.	Bharat Kumar	DIRD NP – 2 <sup>nd</sup> shift
2.	Srishti Kathait	SVCLHS
3.	Aditya Bajaj	SGITBIMIT
4.	Sahil Gupta	RDIAS
5.	Madhvi Pal	KIHEAT
6.	Divij	MSIT – 1 <sup>st</sup> shift (EEE)
7.	Ashish Kumar	GBPGEC (ECE)
8.	Junaid	USCT (CE)
9.	Nargis	Meera Bai College
10.	Jaskirat	TIIPS
11.	Shubham Mangla	GIBS
12.	Sakshi Mohan Pandey	KIHEAT
13.	Aditya Aggarwal	MAIT – 1 <sup>st</sup> shift
14.	Snehil Shrey	IITM
15.	Mallika Malhotra	BVCE
16.	Aditya Tripathi	BVCE
17.	Aryan Singh	BVCE

89. Candidates who were not allotted seats up until the spot counselling rounds even though they had paid the part-academic fee of Rs. 40,000/- either in the rounds prior to the commencement of the spot counselling

rounds or thereafter could also not be denied admission for the reason that linking non-payment of balance academic fee to reporting at the allotted institute/college was introduced, for the first time, *via* notifications issued between 11.08.2019 and 14.08.2019. This condition was not in sync with Clause 11.11 of the Admission Brochure. Clause 11.10 of the Admission Brochure, which adverted to this aspect, dealt with sliding round of counselling i.e. the 4<sup>th</sup> round of counselling and had nothing to do with the 5<sup>th</sup> round of counselling which was first of the two rounds of spot counselling and, therefore, had its own regime prescribed in the succeeding clause i.e. Clause 11.11.

89.1. Besides this, the timelines prescribed for depositing of the balance academic fee were severely curtailed making it almost impossible to fulfil the demand of the University that the entire amount of balance academic fee (besides Rs. 40,000 which had already been deposited as part-academic fee) should also be deposited at the time of reporting to the allotted institute/college.

89.2. The fact that exceptions were made for some candidates by the Committee appointed by the University would only show, in the very least, that even according to the University, payment of balance academic fee was not treated as mandatory condition contrary to the provisions in the notifications. The candidates who would fall in this category would be the following.

<b>S. No.</b>	<b>Name of the petitioner</b>	<b>Admission will now be granted to the following institutes/colleges</b>
1.	Monu Sharma	BPIT (ECE)
2.	Valence Kundra	HMR Institute – 1 <sup>st</sup> shift (CSE)

3.	Vivek Dubey	USCT (CE)
4.	Aayush Sharma	JIMS, VK – 2 <sup>nd</sup> shift
5.	Rahul Airi	BVCE – 2 <sup>nd</sup> shift (CSC)
6.	Yashwardhan	BVCE – 1 <sup>st</sup> shift (ECE)

90. Insofar as the two candidates who were part of the *Rupa Kumari*'s case are concerned (i.e. Ms. Madhavi Pal and Ms. Sakshi Mohan Pandey), I am of the view that the issue raised before this Court by them was not the subject matter, as noted above, in *Rupa Kumari*'s case. There was no assertion made in the writ petition filed before the Supreme Court on behalf of these two candidates with regard to reporting by them at the allotted institute/college and the linkage which is made with the same by the University with payment of balance academic fee. Though the parties were the same, the matter in issue before the Supreme Court in *Rupa Kumari*'s case was not the same or even substantially the same. The matter in issue could have, perhaps, fallen under the principle of *res judicata* or constructive *res judicata* if there had been a pleading to that effect in the writ petition which would have been denied or admitted explicitly or impliedly by the University. These candidates have been included in the list of candidates whose names are shown in paragraph 88 above.

90.1. The matter may have been incidentally and collaterally the same but that by itself would not prevent them from raising the issue in this Court. Therefore, the submission made by the University in this behalf cannot be accepted.

**Relief: -**

91. Accordingly, the captioned writ petitions are allowed. The admissions of the candidates will be restored in cases where it is cancelled and in cases

in which admissions were denied, they will be admitted to the institute/college they were offered admission. This direction will be subject to the petitioners fulfilling the requisite formalities within 5 working days concerning deposit of requisite fee and verification of original documents, wherever applicable.

91.1. It is made clear that the relief granted in these petitions will be restricted to the petitioners and would not apply to those who have not approached the Court until now.

92. The captioned writ petitions are disposed of in the aforesaid terms. Resultantly, all pending applications shall stand closed.

**RAJIV SHAKDHER, J**

**DECEMBER 27, 2019**  
**AJ/A/PMC**