

(1997) 04 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6756 of 1996

Anil Jain, M.S. General Surgery and Others	APPELLANT
Vs	
The Controller of Examinations, Maharishi Dayanand University and Others	RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 116 PLR 832

Hon'ble Judges : K. Sreedharan, C.J.;T.H.B. Chalapathi, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : P.S. Patwalia, for the Appellant; Surya Kant, for Respondent Nos. 1, 2, 4, 5 and 6, Arun Nehra, for Respondent No. 3, Yogesh Sharma and Deepak Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, C.J. and M.S. Liberhan, J.

In view of the D.B. judgment in C.W.P. No. 8517 of 1996, admitted to the Full Bench, to be heard within one month.

JUDGMENT OF THE FULL BENCH.

1. This writ petition has been referred to a Full bench doubting the correctness of the views expressed by another Division Bench in CWP No. 8517/1996. The issue raised is relating to the allotment of seats in Post Graduate Medical Education which have fallen vacant subsequent to the allotment made at the first instance and to those seats which have been created later to the admission given at the time of first counseling.

2. Short facts necessary for understanding the points in controversy are as follows:-

Petitioners 8 in number, after taking M.B.B.S. Degree took the entrance test

conducted by Maharishi Dayanand University, Rohtak seeking admission to various Post Graduate Courses. They came out successful in the entrance test. Depending on their rank, they were called for interview and were directed to exercise their option regarding the discipline to join a particular discipline. They were also asked to opt for one subject of their choice in which their names were shown in the waiting list. The option was to be exercised at the time of the interview. If any vacancy arise in the discipline opted by them in which they are placed in the waiting list, they are to be offered admission. Petitioners got admission in the subject and course for which they had opted at the first instance. They had also given their option for additional subject of their choice. Later on, two seats in M.S. Orthopaedic were created by the College. Those two seats were not offered to the candidates at the time of interview. Therefore, petitioners contend that they could not opt for admission in M.S. Orthopaedic. Additional seats which fell vacant were not offered to the petitioners on the basis of their merit, but, were filled on the basis of options given by candidates at the time of interview. According to the petitioners, if at the time of interview, they were told about additional two seats in M.S. Orthopaedic, they would have opted for the same. Candidates of lesser merit and who got ranks lower than the petitioners in the entrance test have been given admission to the additional seats. This action of the respondents is stated to be arbitrary and against all norms where merit is to be the criteria for admission to a course. Likewise it is contended that - petitioners 4 and 5 who were ranked 32 and 36 are not given admission to M.D. Medicine while respondent No. 4 who secured rank No. 38 got admission to the Course. This has resulted in violation to the Rules that admission to the course must be based on merit. Candidates who are lower in merit have been admitted in better courses, specialities. On these basis, petitioners pray for quashing the admission given to the various courses in M.D./ M.S/PG Diploma and M.D.S. and for issuance of a writ of mandamus directing respondent No. 1 and 2 to offer the seats which have felled vacant and two additional seats which have been created to candidates on the basis of their merit obtained in the entrance test after holding fresh interview.

3. Registrar of Maharishi Dayanand University, Rohtak filed a detailed written statement disputed the claims made by the petitioners. Admission to the various Courses is regulated by the conditions mentioned in the prospectus. Method of selection and admission is provided in Chapter-V of the prospectus. Petitioners who sought admission to the courses in terms of those provisions are estopped from questioning the same. After having gone through the provisions of the prospectus, petitioners voluntarily appeared in the entrance examination and interview, therefore, they are not entitled to question the very provision in the prospectus. Depending on the ratio of Post Graduate Students and Teachers as fixed by the Medical Council of India, more candidates in the specialities of Orthopaedic could be admitted on account of the increased number of teachers. Waiting list was available for filling up those vacancies. Depending on merit of those in the waiting list, candidates were admitted. Petitioner No. 1 was initially

admitted in M.D. Skin. He opted to be wait listed in M.S.(Surgery). When a seat in M.S. (Surgery) fell vacant, depending on his merit and position in the waiting list, he was admitted to M.S. (Surgery). Petitioner No. 3 was initially admitted to M.S. (Surgery). Since, he opted for M.D. (Medicine) and was wait listed in that discipline, when vacancy arose in M.D. (Medicine), he was given admission to that discipline. Similarly, 7th petitioner who was admitted in D.C.H. was subsequently allowed admission in M.D. (Pathology) in order of his merit and his option in the waiting list. Petitioners 2, 4 to 6 and 8 could not be allowed admission in the specialities they opted for, since the vacant seat in those specialities were given to candidates higher in merit or on account of the fact that no seat had fallen vacant in the opted discipline. Had petitioners 1 and 3 opted M.S. Orthopaedics instead of General Surgery and Medicine, to which they were wait listed, they would have secured admission in Orthopaedics. Respondents 6 and 7 did not opt for any of the specialities available. They preferred to be wait listed for M.D. (Medicine) and M.D. (Anaesthesia). When - seats in those disciplines fell vacant, or additional seats were created, they were placed in the discipline in which they were wait listed. On these basis, it is contended that petitioners have no legal right to question the admission given to the respondents in the various disciplines.

4. Provisions contained in the prospectus regarding method of selection and admission of candidate to the various Post Graduate Courses is as follows;-

"Candidates will be called before the interview board according to their respective merit, as notified and they will be required to exercise their choice regarding the course (degree or diploma) and the subject of their choice. Selection to the course and the subject will be according to the availability of seats at their respective turn at the interview. Those candidates who do not get the subject of their choice can opt to be wait listed (in writing) for one subject, of their choice at the time of interview. If somebody does not wish to join any course and wants to be placed in the waiting list, only for a particular subject, he/she can do so in writing at the time of interview. Subjectwise waiting list in order of merit will be displayed. If any seat(s) falls vacant in any subject within one month from the start of session, the same will be offered in order of merit to those who have been placed in the waiting list for those subjects. No request from any other candidate (even higher in merit) for any change in subject shall be entertained subsequently".

This provision enable a candidate to choose one of the available courses at the time of interview. He can at the same time get himself included in the waiting list in any other discipline. If a candidate is not getting a seat in the discipline of his Choices, he may refuse to join any other discipline and prefer to be wait listed for admission to the discipline of his choice. A candidate included in the waiting list can get admission in the subject depending on the interse merit of candidates included in the waiting list. Many of the petitioners while securing admission to one of the disciplines depending on the availability, could opt to any other

discipline of their choice. Subjectwise wait list in order of merit was displayed. When vacancies arise in the subjects opted by them, they were given admission to the course of their choice. After having secured admission in the discipline of their Choice, they now state that additional seats or vacancies which arose in better discipline - should have been offered to all the candidates on the basis of merit. Such a procedure is not borne out from the prospectus.

5. Maharishi Dayanand University, Rohtak issued prospectus for admission to M.D./M.S./PG Diploma and M.D.S. entrance examination 1996. That prospectus contained eligibility conditions, scheme of examination, method of selection and admission, procedure for applying for admission and general information to candidates. Candidates appeared in the entrance test on the basis of the provisions contained in the prospectus. Eligibility for admission to the course has to be ascertained according to the provisions contained in the prospectus. The prospectus thus, controls the method and procedure for taking the examination and for admission to the course. Full bench of this Court in Amardeep Singh Sahota Vs. The State of Punjab etc., observed:-

"Eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law".

We are in respectful agreement with the said statement of law. This being the position, we hold that the prospectus decides the rights of the candidates for admission to the course. When, it is seen that the provisions contained in the prospectus have been strictly complied with by the respondents, petitioners are not justified in putting-forth claim for admission to the additional seats which were created or to the seats which had fallen vacant subsequently.

6. The Supreme Court in Anand S. Biji Vs. State of Kerala and Others, laid down scheme for admission to Post Graduate Courses. According to their Lordships, candidate is not to give choice of subjects at the time when he applies for entrance examination. He has to be called for counseling. A candidate should have the right to choose any one of the available seats when he/she is called for interview depending on her/his rank. The seat so opted by the candidate is to be allotted to him/her. The allotment thus made, according to their Lordship, should be firm and final. In other words, allotment of a seat at the time of counselling is not to be varied subsequently. In the prospectus issued by the Maharishi Dayanand University, Rohtak, a candidate can get admission to one of the seats depending on the availability of seats in the discipline. At the same time, he can opt for one subject of his choice and wait listed for consideration when vacancy arise, depending on his merit in the waiting list. If a candidate is not getting a course of his choice, he may refrain from joining any course and prefer to be wait listed to be considered in the subsequent vacancies. The right given to the candidate as per the prospectus, in our considered opinion is most reasonable and helpful to the candidates.

7. Petitioners brought to our notice decision rendered by a Division Bench of this Court in CWP No. 8517 of 1996. Issue raised therein was relating to admission to various disciplines of M.D.S. Course. Available seats in various disciplines were allotted to the candidates and admission was completed. Subsequently, two seats fell vacant in the discipline of Periodontia. This court ordered that all seats which have subsequently become available be filled up as per merit of the candidates in the entrance test. In other words, this Court directed all the candidates depending on merit to opt for admission to the disciplines. Another Division Bench in CWP No. 9587 of 1993, while dealing with admission to M.D. Course in Obstetrics and Gynaecology took the view that if all the students are not allowed to opt for admission to the vacant seats, meritorious persons will be deprived of their right to get admission to the seats of their choice and merit would suffer. Consequently, Bench took the view:-

"it would be in the interest of justice and fair play that the advantage of the seats which have fallen vacant on account of fortuitous circumstances be offered to all the students on merit".

If this view taken by the two Division Benches in the cases mentioned above are adopted, it will unsettle the admission given to the students at the first counselling. As and when, vacancies arise in each discipline, it will have to be put to all the candidate. If one, on higher rank wants to change his discipline and opt for the vacant seat, he has to be accommodated. Seat left by him in the discipline in which he was already admitted should again be thrown open to others. This process will continue for an indefinite period and that will adversely affect the course of study. To prevent such a tendency and to have a finality to the process of admission, their Lordships of the Supreme Court in Anand S. Biji's case (supra) observed that allotment of seats made to a candidate in the first counselling should be firm and final. Views expressed by the Division Bench of this Court referred to earlier are, therefore, unsustainable and we disapprove the same.

8. An argument advanced by the learned counsel representing the petitioners that the seats which become vacant or are created subsequently if not offered to all the candidates depending on merit, merit will become casualty in such a situation. According to the counsel, it may also result in allowing a candidate to take advantage of fortuitous circumstance of getting a seat of his choice ignoring the claims of meritorious candidates. We are not impressed with this argument. Candidates who seek admission to the Post Graduate Courses in Medicine by taking the entrance examination are meritorious. They have competed the entrance examination to M.B.B.S. Course. They successfully completed that course. Thereafter, only the more meritorious doctors take the entrance examination and come out successful. Such successful candidates alone are to be on the merit list. They alone are figuring in the waiting list as well. Viewed in that light, the fortuitous vacancies which arise later on, are also claimed by meritorious candidates. Candidates who" are placed in the waiting list cannot be

considered as less meritorious. Nor can it be said that admission given to persons in the waiting list will make merit a casualty.

9. Apex Court in many decisions have fixed the last date for admission to the Post Graduate Courses. Indian Medical Council has prescribed period of study for awarding Post Graduate Degree. So, commencing of the course of the study fixed by the Authorities have a purpose and that is not to be treated as formality to be violated by this Court in exercise of the powers under Article 226 of the Constitution. Prospectus issued by Maharishi Dayanand University, Rohtak, specifically provided that admission will close one month after the start of the Session and no candidate shall be admitted after that even a seat falls vacant. This provision has to be honoured not by its breach but by its adherence. One month has lapsed after the beginning of the course even prior to the filing of this writ petition. On that count also, petitioners are not entitled to any of the reliefs asked for in this writ petition.

10. In view of what has been stated above, we find no merit in this writ petition. It is accordingly dismissed. However, we make no order as to costs.