

(2013) 08 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : LPA-1543-2013 (O and M) and LPA-1544-2013 (O and M)

Apoorv Bhardwaj and Another

APPELLANT

Vs

Rupinder Singla and Others
 Arvinder Vs Dr. Sunil Garg
and Others

RESPONDENT

Date of Decision : 31-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 08 P&H CK 0169

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Augustine George Masih, J

Bench : Division Bench

Advocate : Deepak Sibal, for the Appellant; Gurminder Singh, Advocate for Respondent No. 1 in LPA-1543-2013, Mr. Rajiv Atma Ram and Mr. Arjun Partap Atma Ram, Advocate for Respondent No. 1 in LPA-1544-2013, Mr. R.K. Malik and Mr. Samrat Malik, Advocate for Respondents No. 2 to 13 in LPA-1543-2013, Mr. Saurabh Garg, Advocate for Respondents No. 14 and 15 in LPA-1543-2013 and for Respondent No. 3 in LPA-1544-2013, Mr. B.B.S. Sobti, Advocate for Respondent No. 4 in LPA-1544-2013, Mr. P.S. Bajwa, Additional Advocate General, Punjab, for Respondents No. 16 and 17 in LPA-1543-2013 and for Respondent No. 2 in LPA-1544-2013, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—These are once again appeals arisen on a particular aspect of admissions to medical courses. If one may say,

there has been no perfect solution to the issue of admissions to medical courses with the result that every year sees a spate of litigation on different

aspects. This year has been no different. In so far as the factual matrix of the present case is concerned, the controversy revolves around the

admissions to Postgraduate Degree/Diploma Courses for Session 2013 in the Health Sciences Institutions (Medical/Dental). It is a common case

that the notification dated 05.04.2013 is the initiation of the process. It would be

useful to reproduce hereunder some of the clauses of this

notification referred to before us by learned counsels for the parties:-

2. The admission to the diploma courses shall also be based on the NEET-PG-2013 merit. The distribution of seats shall be in the same manner as

that of the postgraduate seats. The tentative list will be displayed by the Director, Research and Medical Education on the official site i.e.

www.punjabmedicaleducation.org.

6. The Governor of Punjab is further pleased to authorize Baba Farid University of Health Sciences, Faridkot to make admissions on the basis of

NEET-PG to be held by the National Board of Examination for Medical courses and All India Institute of Medical Sciences (AIIMS) for Dental

Courses as per procedure and criteria laid down in the notification under The Punjab Private Health Sciences Educational Institutions (Regulation

of Admission, Fixation of Fee and Making of Reservation) Act 2006.

11. In case of any dispute in distribution of seats for all institutions situated in the State of Punjab the Director Research and Medical Education,

Punjab will be appellate authority.

D Conversion of seats under All India Quota 60% & 40% Quota/NRI Unfilled seats:

The allotment of the seats shall be made through counselling (personal appearance) as per 100 point approved roster register being maintained.

The counselling shall be done according to category rank and roster as per 60%/40% and other reserved categories.

24. Reservations in Government Colleges:

In case enough eligible candidates are not available in the reserved category concerned, the seats will automatically be converted into same

reserved category in general quota. The reservation in

25. Reservation in Private Colleges:

Reservations in Private Unaided Health Sciences Educational Institutions shall be made under The Punjab Private Health Sciences Educational

Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act 2006. In case enough eligible candidates are not available in

the reserved category concerned, the seats will automatically be converted into general category. The reservation will be as follows:

34. This notification supersedes all the prior notifications for admission to the postgraduate degree/diploma courses in the State of Punjab except the super-specialty stream.

(emphasis supplied)

2. A reading of clause 2 in the notification, thus, shows that it envisages the "tentative list" to be displayed on the official website. Clause 11

requires a dispute to be resolved by the Director, Research and Medical Education, Punjab through appeal; the allotment to be made through

counselling as per roster register maintained; reservations to be provided both in government and private colleges as specified therein; and a

notification being in supersession of all the prior notifications for admission except super-specialty stream.

3. The dispute really pertains to the issue whether any "institutional preference" has to be given in pursuance to this notification read with the

prospectus published in pursuance to the aforesaid notification. We may note at this stage itself that the expression "institutional preference" does

not form a part of the aforesaid notification nor is it mentioned as a category for any reservation/preference either in government colleges or private

colleges.

4. The process of admission started with the issuance of the aforesaid notification which was followed by a prospectus issued by the University on

17.05.2013. The last date for deposit of fee was 25.05.2013 and for the admission application forms to be handed over was 26.05.2013. The

first counselling for 40% quota was scheduled for 27.05.2013 but was actually held on 20.06.2013 and the admissions given on the same day.

5. In so far as the prospectus is concerned, clause 11 once again provides for a tentative list of the institutions/distribution of seats/specialty wise to

be displayed on the website to the University, while as per clause 12, the final category/institution wise distribution of seats was to be displayed at

the time of counselling. The prospectus is once again silent on the so called "institutional preference".

6. The expression "institutional preference", however, found its presence in the tentative list of distribution of seats for admissions having been

carved out of the general merit list and was so displayed on the website. In the same tentative list, while referring to the expression "institutional

preference" it has been stated that the "institutional preference" means candidates who have passed their MBBS from Baba Farid University of

Health Sciences, Faridkot/Guru Nanak Dev University, Amritsar/Punjabi University, Patiala.

7. We may, however, state at the threshold that the expression "institutional preference" is not unknown and the right to give such "institutional

preference" has been upheld by the Hon"ble Supreme Court in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, . The question

which, however, arises is whether there could have been any "institutional preference" granted when it was not so envisaged in the notification and

the brochure referred to aforesaid, though it was mentioned in the tentative list published on the website. We may also add that it is nobody's case

that the provision of "institutional preference" is a mandatory requirement.

8. The private respondents before us are the candidates who are seeking "institutional preference" and approached the learned Single Judge by

filing writ petitions under Article 226 of the Constitution of India seeking "institutional preference" on the basis of the tentative list published on the

website. This plea has found favour with the learned Single Judge as per the impugned order, while noticing the judgment of the Hon"ble Supreme

Court in Parmender Kumar and Others Vs. State of Haryana and Others, that once the process of selection of candidates for admission is

commenced on the basis of prospectus, no change could thereafter be effected by the government orders to alter the provisions contained in the

prospectus. This plea in turn is based on the factual matrix that this tentative list continued to be displayed on the website till 26.07.2013 well after

the counselling held on 17.06.2013.

9. The stand of the appellants before us and the University as well as the State of Punjab is common. This stand is predicated on the plea that

though "institutional preference" was given earlier, the notification referred to as aforesaid which superseded the earlier notification shows a

conscious decision that there would be no "institutional preference" given by carving out the same out of the general category seats. It may,

however, be noticed that the minutes of the meeting which were produced before the learned Single Judge are dated 21.05.2013 held under the

Chairmanship of the Director, Research and Medical Education, Punjab, who is

incidentally the appellate authority referred to aforesaid. Principals of eight medical colleges of Punjab participated and the decision was taken to convert and include the "institutional preference" seats in general category as per the government notification. In our view, effectively, what this meant was that what was already stated in the notification i.e. absence of "institutional preference" was examined and taken to its logical conclusion by the said decision. This was thereafter followed by the counselling held on 17.06.2013 in the same manner.

10. The stand of the private respondents, however, was and is that this decision of 21.05.2013 could not have changed the terms of the notification, brochure and tentative list already published. The expression "institutional preference", however, does not find a mention in the first two, but only in the tentative list. The fact that both the notification and brochure envisage a tentative list was contended by the private respondents to be critical to the issue and this is what has found favour with the learned Single Judge. The decision taken on 21.05.2013 was also stated not to have been published on the website, but was part of the record of the University. This was so for the obvious reason that the admissions were to be conducted by the University and the meeting was presided over by an officer of the State of Punjab as Chairman who was the appellate authority referred to aforesaid.

11. The stand of the Director, Research and Medical Education, Punjab Chandigarh is contained in his affidavit and we consider it appropriate to reproduce para 3, which is as under:-

3. That regarding the first contention of the petitioners of Institutional Preference seats it is submitted that distribution of seats which the petitioners have attached with the present writ is not part of the prospectus. There is no provision in the prospectus for Institutional Preference seats. This distribution of seats was displayed on the official website of the respondent No. 4 but later on a meeting was held under the chairmanship of the answering deponent and distribution table was changed with consent of all the participants and was uploaded on the official website on 21.05.2013. The changed roster is attached as annexure R-1. According to this roster there is no provision for Institutional Preference seats. The record pertaining to this can be produced in the Hon'ble Court at the time of

arguments. It is further submitted that in para 12 of the instructions in the prospectus it is clearly written that final category/institute wise distribution of seats shall be displayed at the time of counseling .

12. The aforesaid is to show the commonality of the stand of the State of Punjab and the University and that of the appellants that "institutional preference" did not form part of either the notification or the brochure and, thus, the tentative list required to be published in the brochure could not have included "institutional preference" which would be beyond the brochure. This is of course sought to be rebutted by the private respondents by contending that the tentative list was important because that envisaged how the seats were distributed among the colleges specialty wise and if that did not have sanctity, then there was absence of any mechanism to distribute the seats.

13. As to the consequence of the meeting held on 21.05.2013, they recorded the factum of institutional seats not being included in the general category and, thus, recognized what has already been done as per the notification and the brochure. We reproduce the proceedings of the meeting as under:-

Proceedings of Meetings:

1. As per the Government notification, the institutional preferences seats have been converted and included in the General Category.
2. As per the Government notification, the P.G. seats in Government Colleges, shall be filled as per Punjab Resident Status.
3. The Medical Council of India has already granted approval for Diploma in Anesthesia in Government Medical College, Patiala and courses of D.C.H. and Diploma in Anesthesia at Government Medical College, Amritsar. For giving approval to fill these seats during counselling has applied to Baba Farid University of Health Science, so that these seats could be filled through counselling.

(emphasis supplied)

14. We have examined the aforesaid submissions made by learned counsels for the parties who have articulated their respective stands before us.

We, however, do not find ourselves in agreement with the opinion expressed by the learned Single Judge in the impugned order. The reasons for

the same are being set out hereunder by us.

15. In our view, the crucial aspect is the absence of the concept of "institutional preference" in the notification itself. No doubt, "institutional preference" must not necessarily be in the nature of reservation and, thus, did not form part of the percentage of reservations, but if it was to be so given, it ought to have been specified in the notification. This has been followed up by the brochure which also has no mention of "institutional preference". The minutes of the meeting held on 21.05.2013 only recognized the aforesaid facts i.e. a decision has been taken already by the State Government not to give "institutional preference". This meeting, as stated earlier, is presided over by the officer of the State of Punjab, who is the appellate authority, to sort out the issues qua distribution of seats.

16. We are of the view that merely because the tentative list published on the website included the aspect of "institutional preference", albeit, mistakenly, cannot give right to private respondents to claim such "institutional preference". No doubt, this tentative list prescribes the distribution of seats and the reservations. However, this tentative list is pursuant to the brochure which requires such a tentative list to be published. It has to be in conformity with the brochure and it is the terms of the brochure which will govern. Thus, if the tentative list is not in conformity with the brochure, it cannot give any right. To test this argument, suppose the tentative list had prescribed a different percentage of reservation than what was envisaged in the notification and the brochure, it could not have got precedence over what had been set out in the notification and the brochure. The expression "tentative list" itself shows that it is tentative in character and not the final list. The finality is given at the stage of counselling and at that stage the notification and the brochure have been strictly followed.

17. We must, however, fault the respondents for not having taken remedial steps to bring the tentative list in conformity with the brochure and, thus, causing not only confusion but unnecessary spate of litigation consuming judicial time. This carelessness, if we may so categorize it, created unnecessary hopes in the minds of the private respondents and resulted in filing of the writ petitions and now the appeals before us.

18. We are clearly of the view that if "institutional preference" was to be given, it had to be and would have been incorporated in the notification and the brochure where some preference has been given under the reservation

in government colleges for wards of terrorism/riot affected persons, it has been so stated. The same is the position with wards of defence personnel and Punjab Police personnel. In fact, the stand of the State of Punjab is quite categorical that such "institutional preference" was consciously given a go by while issuing the notification. The fact that earlier "institutional preference" was given would not mean that for a subsequent period such "institutional preference" would be given specifically when a notification clearly stated that it was in supersession of the earlier notifications. This is supported by the fact that in the earlier notification dated 21.01.2011, where institutional preference was given, it was clearly spelt out in the following terms as noticed by the learned Single Judge:-

the Governor of Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats for general category candidates who have passed their qualifying examination from Baba Farid University of health Sciences, Faridkot/Guru Nank Dev University, Amritsar/Punjabi University, Patiala, except from Christian Medical College, Ludhiana. The Selection of various PG seats will be purely on basis of marks obtained in PGET.

19. The aforesaid clause has been consciously omitted in the notification in question before us.

20. Even if it is presumed that there were some doubts in the minds of the private respondents arising from the tentative list, the same were dispelled, albeit subsequently. The absence of "institutional preference" being mentioned in the notification; its conscious omission as compared to the earlier notification; and its absence in the brochure, thus, makes it clear that the "institutional preference" was not envisaged and mistake in the tentative list which is the requirement of the notification and the brochure cannot be taken advantage of by the private respondents.

21. Learned counsel for the parties state that there are no other pleas to be examined.

22. For the aforesaid reasons, we are unable to sustain the impugned order.

23. We are told that the counselling is already over yesterday and that is the reason why we had stayed the operation of the impugned order after expressing our opinion when deferment of judgment was sought by the respondents. Learned counsel for the State of Punjab states that there are

66 seats still available in the basic medical sciences i.e. anatomy, biochemistry, physiology, forensic, microbiology, pathology, pharmacology and

SPM. That, however, does not seem to interest the private respondents.

24. The appeals are accordingly allowed leaving the parties to bear their own costs. We would like to record our appreciation for the assistance

given by learned counsels for deciding this issue at such a short notice in view of the urgency of the cut off date of 30.08.2013 fixed by the

Supreme Court.