
(2014) 03 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20407 of 2009

Azamal Ahamad

APPELLANT

Vs

Baba Farid University of Health Sciences

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : AIR 2014 P&H 76

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, Sr. Advocate and Arjun Partap Atma Ram, Advocate for the Appellant; Gautam Pathania, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present judgment shall dispose of two writ petitions i.e. CWP Nos. 20407 and 18683 of 2009, as common questions of facts and law are involved in both the petitions. Facts are being taken from CWP No. 20407 of 2009, Azamal Ahamad and others v. Baba Farid University of Health Sciences, Faridkot and others. Challenge in the present writ petition by the students and the institute where they are studying is to the order dated 30.12.2008 (Annexure P-4) whereby, their admission in the Bachelor of Ayurvedic Medicine Science Course (BAMS) was cancelled on the ground that it was violative of Clause 5(C) xi of the PMET-2008 notification. The said order was further upheld on 02.07.2009 (Annexure P-6) and on 16.09.2009 (Annexure P-11) whereby, the university reiterated its earlier decision and stated that the admission of the six students had not been regularized. The said orders are also being challenged.

2. The pleaded case of the petitioners is that a notification dated 31.03.2008 for admission to MBBS/BDS/BAMS/BHMS was issued and the admission was to be done on the basis of Common Entrance Test conducted by the respondent-university. That petitioner Nos. 1 to 5 were admitted on 30/31.10.2008 on the ground that they belong to backward class category of other States and had not taken the PMET and were admitted on the basis of Clause 4(C)(ii) and were non-

PMET candidates and were admitted on the basis of their 10+2 examination results. No candidate from the State of Punjab was available and no PMET qualified candidate was available for admission. Petitioner No. 6-college had submitted the students' registration return on 10.11.2008 to the respondent-University, which had rejected the said return on the ground that the students belong to Backward Class category of other States and had secured less than 50% marks in Physics, Chemistry, Biology (PCB) in 10+2 examination and, therefore, they were not eligible for admission to the said course. The eligibility in the case of Scheduled Caste/Backward Class was 40% marks in PCB in the 10+2 examination upto second counselling and after the second counselling, admission is to be made to the persons who have merely qualified 10+2 examination without any minimum marks. The representation of the college dated 27.01.2009 was wrongly rejected on 02.07.2009 and the second representation was marked to the Appellate Authority and the Appellate Authority-respondent No. 2 had allowed the representation on 19.08.2009 and directed the university to take a sympathetic view. However, the university had again rejected the representation on 16.09.2009. Resultantly, the present writ petition was filed on the ground that the examinations were to commence from 30.12.2009 and roll numbers were not being issued.

3. This Court, vide interim order dated 24.12.2009, permitted the petitioners to appear in the examination provisionally, however, it was further ordered that the said permission would not create any right or equity in favour of the petitioners and shall remain subject to the outcome of the writ petition. Thereafter, respondent No. 4 was impleaded being the Nodal Ayurvedic University for the State.

4. The respondents No. 2 and 3, in their written statement, took the plea that the petitioner No. 6-college had informed the University at 2.00 p.m. on 31.10.2009 (sic 31.10.2008) that there was no candidate on the cut off date upto 2.00 p.m. but they admitted petitioners no. 1 to 5 at 9.30 a.m. on the same day. That no nominee of the Punjab Government and University was present at the time of counselling, as required as per the notification. That there is no Backward Class quota provision for General Category students of outside the State in management quota in private institution. 50% marks is the eligibility for admission to BAMS course in management quota in private institution for students of outside Punjab State in General Category. It was further denied that 50% marks (eligibility) are required for General Category students of outside State in management quota of private institute and there is no Backward Class quota in the management quota for students of outside Punjab State for general categories. So, condition of Backward Class eligibility could not be applicable to the management quota in private institutions. The nominees of the University and the Government should have been present at the time of counselling before cut off date, as per the notification. The Appellate Authority had only recommended to the University to decide in favour of petitioners No. 1 to 5 while taking sympathetic view but not ordered to register the said students for

admission to BAMS course as per the Punjab Government notification. Accordingly, it was submitted that petitioners No. 1 to 5 were not eligible for admission to the said course as they did not have 50% marks in General Category quota in 10+2 examination and were not eligible for admission. There was no Backward Class quota in the General Category, Management quota for other States and they cannot be admitted. The only difference in the second case in CWP No. 18683 of 2009 is that the admission pertains to the 2009 course and the issue in question is the same.

5. Counsel for the petitioner has submitted that the prospectus provided that admission was to be done on the basis of the students who had qualified in PMET and if the students were not available, then PMET appeared candidates could be considered. Similarly, candidates from other States could also be taken if Punjab State candidates were not available and in pursuance of the said conditions, the petitioners had been given admission, being students belonging to the other States. It was further submitted that there was an Appellate Authority provided in the prospectus namely the Director, Research and Medical Education for any dispute and the Appellate Authority had decided in their favour on 19.08.2009 and a sympathetic view had been directed to be taken but, in spite of that, the representation had been rejected subsequently. It was thus, submitted that the admission had been made as per the clauses and in accordance with law and the course was now over and the students have completed the course and no loss was caused to anyone as there were no other students available on the cut off date. Reference was made to the additional affidavit filed vide CM. No. 13360 of 2010 wherein, it was mentioned that 39 vacant seats had been left after completion of admission in the State of Punjab and there was also one vacant seat left with the petitioner No. 6-institute to contend that it was not that ineligible students had been given admission at the cost of some eligible students. Reliance has been placed upon Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, ; Ashok Chand Singhvi Vs. University of Jodhpur and Others, ; Priya Gupta Vs. State of Chhatisgarh and Others, ; Deepa Thomas and Others Vs. Medical Council of India and Others, and Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another,

6. Counsel for the University, on the other hand, placed reliance upon Sub-clauses ix and xi of Clause 5(C) to contend that if the admission was made against the backward class category, the students had to belong to the State of Punjab. It was further submitted that as per Clause 7.4(c) of the prospectus, the representative of each of the Government and the University had to be present and admission must be done on the basis of merit in the PMET. No University/Government representative was there at the time of admission and the admission was done wrongly. A perusal of the first impugned order dated 30.12.2008 would show that the admission was cancelled on account of Clause 5(C) xi, which provides that for filling seats on All India basis, after exhausting the Punjab candidates, reservation is to be for the Scheduled Castes and

Scheduled Tribes and the handicapped category candidates. The petitioners belong to the Backward Class category of other States and who have secured less than 50% marks in PCB in 10+2 examination and the candidates were not eligible for admission. The relevant portion of the order reads thus:-

In BAMS/BHMS for seats filled on all India basis, after exhausting Punjab candidates, the reservation shall be 15% for SC, 7.5% for ST and 3% for Handicapped.

7. It is the admitted case that the petitioners belong to other States and do not belong to the Backward Class category of the Punjab State and have not taken the PMET examination. The prospectus dated 31.03.2008 provides that the admission to the said course is on the basis of qualifying examination namely the PMET. Only if the candidates are not available, then PMET appeared candidates are to be considered and candidates from other States could also be taken if Punjab State candidates are not available. That as per the eligibility criteria which has been laid down in Clause 4(C) (i) for PMET for BAMS course, if PMET qualified candidates are not available, then the PMET appeared candidates, those having higher marks in, the qualifying examination, could be admitted, subject to the condition that they had secured a minimum of 50% marks (40% marks in cases of Scheduled Caste/Backward Class categories) taken together in PCB. That further as per Clause 4(C)(ii), after second counselling, seats which were left vacant in private institutes both in the Government as well as management minority quota shall be filled out of the eligible candidates who had appeared in PMET, It was further provided that if PMET qualified candidates are not available both on the University and open advertisement, then candidates who have appeared in the PMET on the basis of their score in 10+2 or equivalent examination, are to be admitted. Further if such candidates were not available, those who have not appeared in PMET, will be admitted on the basis of 10+2 or equivalent examination. Further categorization was also there that if such candidates were not available, candidates not belonging to Punjab shall also be considered, subject to the condition that all such admissions" were made on merit in a transparent manner after giving proper public notice. The relevant clause reads thus:-

1.3 The Governor of Punjab is further pleased to notify that the admission to BAMS/BHMS course shall be made on the basis of qualifying examination if the candidates qualified in PMET are not available out of the PMET appeared candidates of the corresponding year. The candidates from other States shall also be taken, if Punjab candidates are not available.

4-B For MBBS/BDS/BAMS/BHMS Courses.

Candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks (40% for SC/BC) taken together in PCB and also in Physics, Chemistry and Biology (PCB) in 10+2 examination.

4-C For BAMS/BHMS Courses

(i) For BAMS/BHMS course if PMET qualified candidates are not available then out of the PMET appeared candidates shall be admitted on the basis of his/her marks in the qualifying examination subject to the condition that he/she has secured minimum of 50% marks (40% marks in case of SC/BC) taken together in PCB and also in Physics, Chemistry and Biology (PCB) in 10+2 examination. In case of BHMS, has secured 40% (for SC/BC 33%) marks in aggregate at 10+2 in PCBE as well as PCB group taken together. The candidate should also have passed 10+1 examination in Physics, Chemistry, Biology and English individually and must have obtained a minimum of 33% marks in each subject and has passed in each subject at 10+1 and 10+2 and should have passed the examination by the 1st date of counselling both for BAMS & BHMS.

ii) After second counseling, the seats left vacant in Private institutes both in Government as well as Management/Minority quota shall be filled by the Management out of the eligible candidates who have qualified in PMET. However, in case of BDS, BAMS and BHMS, if the PMET qualified candidates are not available both from the University and on open advertisement, then the candidates who have appeared in PMET shall be admitted on the basis of their score in 10+2 or equivalent examination. If even such candidates are not available, then those who have not appeared in PMET will be admitted on the basis of 10+2 or equivalent examination. Even if such candidates are not available, the candidates other than belonging to Punjab shall also be considered subject to the condition that all such admissions are made on merit in a transparent manner after giving proper public notice.

Clause 5(ix) and (xi) providing for reservation in private institutes reads thus:-

ix. Candidate belonging to SC/BC will be eligible for admission as per their combined merit in PMET in General Category also if they opt for the same. However, on the same day of counselling the candidate shall be able to opt for category seat also if he/she is eligible and opts for the same. There shall be constitutional reservation in the Management Quota in the private Institutes but there shall be no reservation in minority Institutes.

xi. In BAMS/BHMS for seats filled on All India basis, after exhausting Punjab candidates, the reservation shall be 15% for SC, 7.5% for ST and 3% for Handicapped.

Clause 7.4 reads thus:-

7.4 Admission To Private Institutes-

(a) The distribution of seats in private medical institutions would be:

Government quota seats --50%

Management/Minority quota seats 50% (including 15% NRI quota)

(b) The Government quota seats would be filled up, on the basis of PMET merit, by the Admissions Committee appointed by the Government.

(c) The Management Quota seats would be filled up by the admission Committee headed by the Principal of the Institute concerned and comprising of the representative each of the Government and the University, strictly on the basis of merit in the PMET of the corresponding year. The Principals of the concerned institutes will request the Government and the University well in advance for nominating their representatives. Government quota seats remaining vacant will be transferred to Management Quota and vice-versa. University will adjust a calendar of admission to the management quota seats in such a way that admission dates do not clash.

All candidates with compartment for consideration under NRI/Management/Special Management seats shall have to clear their compartment before their admission.

(d) In case of BAMS/BHMS if the candidates who have qualified PMET are not available then the PMET appeared candidates in the corresponding year, on the basis of their score in qualifying examination. If Punjab candidates are not available then candidates from the other States shall also be eligible to be admitted.

(e) Foreign Indian Student (N.R.I.) seats shall be filled up as per the procedure described in para 6.

(f) The private institutions would be given wide publicity in at least two English and two regional language news papers before filling up seats and the candidates would be given at least 14 days time to apply. The applications shall be received by the institutions directly. Admission Form would not be denied to any candidate. The minority quota seats shall be filled on the basis of inter se merit of the candidates in the test conducted by the minority institute, or on the basis of PMET of the corresponding year in case of management quota. The admissions would be finalized by the Committee as per provisions of para 8 (E).

8. That from the perusal of the above clauses, it would be clear that candidates had to have a minimum of 50% marks in PCB in the 10+2 examination in the present case. The argument of counsel for the petitioner that since the petitioners belong to other States and were Backward Class category students and, therefore, in their case, 40% marks was the eligibility, cannot be accepted. Once the institute has given admission to the petitioners on All India basis, they are not entitled to claim the benefit of the Backward Class certificate and claim that they were eligible since only 40% marks were to be counted for the purpose of eligibility. Once the admission was against the said quota, then the minimum of 50% marks would have been the requirement and admittedly, the petitioners do not fulfil the said qualification. The benefit of backward class could only have been given if the petitioners belong to the State of Punjab and the certificate of the other State would be of no use. The Apex Court in Subhash Chandra and

Another Vs. Delhi Subordinate Services Selection Board and Others, held that a person is to be resident of the same State to claim the said benefit. In the said case, the petitioners had claimed themselves to be entitled to the benefits of the Presidential notification declaring their caste to be Scheduled caste, which had been rejected by the Delhi Administration and the single Judge had granted the benefit to the second generation migrant. The Division Bench of the Delhi High Court also upheld the said view. The appeals filed were allowed by the Apex Court by holding that if the members of the Scheduled Caste and Scheduled Tribes in other States are considered as backward classes in Delhi, intensive studies were required to the question that they would come in the purview of the definition of the Backward Classes so as to answer the description of being socially and educationally backward. Once the petitioners themselves were not eligible and were well aware of the terms and conditions of the prospectus which were binding upon them, they cannot turn around and now contend that merely because they have completed the course, they are entitled for regularization of admission.

9. The judgments relied upon by the petitioner in Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, would not be applicable in the present facts and circumstances since in the said case, there was no dispute about the eligibility and it was only because students having higher merit had been ignored, the Apex Court allowed in the facts and circumstances of the case the students to continue with their course. Similarly, in Ashok Chand Singhvi Vs. University of Jodhpur and Others, also, the student was allowed to continue as there was no mistake on his part and could not be allowed to suffer for the mistake committed by the Office of Chancellor of the University.

10. In Priya Gupta Vs. State of Chhatisgarh and Others, also, strong reliance of which has been placed by the counsel for the petitioners, the students' admission had been regularized in spite of the fact that they had taken advantage of their father's position and taken admission out of the turn on the last date. In spite of that the said students were allowed to continue their studies and their admission was regularized subject to payment of Rs. 5,00,000/-. Further perusal of the said judgment would go on to show that in para No. 51, specific observation was that the said judgment is not to be treated as a precedent in the cases pertaining to admission. It is not a case where the students were not eligible at the first instance.

11. That the judgment in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, would show that the students were not aware that the 1st year B.Sc. examination of the Rajasthan and Udaipur Universities were recognized as equivalent to the Pre-University Examinations of the Pre-University Education Board, Bangalore and, therefore, it was held that they should not suffer for the sins of the management of the Engineering colleges.

12. In Deepa Thomas and Others Vs. Medical Council of India and Others, there was a mistake in the prospectus regarding the eligibility for admission which did

not specify that separate 50% marks were required in the competitive entrance examination. It was in such circumstances, a finding was recorded that since the mistake or omission occurred before the applications were invited, it was not possible to attribute any mala fides and there was no attempt to favour the appellants.

13. In Central Airmen Selection Board and Another Vs. Surender Kumar Das, the Apex Court held that the principle of promissory estoppel is based on equitable principles and a person who has misled the authorities cannot invoke the said principle. The observations read as under:--

7. The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear from the counter-affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court was clearly erred in law in invoking the said principle in the facts of this case. The judgment and order of the High Court therefore cannot be sustained.

14. In similar circumstances, the Supreme Court in Mahatma Gandhi University and Another Vs. Gis Jose and Others, set aside the order of the High Court wherein, the student had secured only 53.3% marks in a qualifying examination against the minimum requirement of the cut off marks as 55%. The submission that the student had never misrepresented was rejected. It was held that once an irregular admission had been given in breach of Rules, she should not be allowed to complete the course and to write the examination and the same would be illegal. It was held that misplaced sympathy should not be shown in total breach of rules. The relevant observations read thus:--

9. The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened. Such a course was

disapproved by this Court in Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, In paragraph 6 of the Judgment, this Court observed as follows:

6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.....

10. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal.

15. Reliance can also be placed upon the judgment of the Apex Court in Civil Appeal No. 5992 of 2012, The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and Others, where it had been held that once the eligibility criteria is prescribed, it must be strictly adhered to and any dilution or tampering with it will work injustice on other candidates. In Civil Appeal No. 674 of 2013: Priyadarshini College of Computer Science and Another Vs. Manish Kumar and Others, the Apex Court held that every candidate applying for a particular course is required to go through the instructions thoroughly including the eligibility criteria and after fulfilling the required conditions, fill in the application form and cannot claim any benefit of his own wrong.

16. In the present case, the petitioners having not secured 50% marks, were well aware that they were not eligible for admission to the BAMS course and, therefore, cannot contend that their admission is liable to be regularized. The interim orders had been granted by this Court subject to the final decision of the writ petition. Once the petitioners have been found not to be eligible, as such, no benefit can be granted to them for the period they have spent in pursuing a course for which they were not eligible to apply. The submission that the Appellate Authority has decided in their favour, is without any basis. The Appellate Authority has only considered the issue as to whether the admission was made on the last date and has not even gone into the merits of the case regarding the eligibility, which is the subject matter of consideration and the ground for cancelling admission. That, admittedly the Government nominee and the nominee of the University were not present when the admission was made on the last date which was mandatory as per Clause 7.4(c). Had the said nominees been present, they would have pointed out the illegality and ineligibility of the petitioners and admission would not have been granted. It is also to be noticed that the admission was immediately cancelled on 30.12.2008, within a period of 2 months but the petitioners and the college kept on representing and delaying the issue and further orders were passed on 02.07.2009 and 16.09.2009, which are now subject matter of challenge. The

interim protection was granted by this Court on 24.12.2009 with a rider that the provisional permission would not create any right or equity in favour of the petitioners and would remain subject to the outcome of the writ petition. In view of the said condition, the petitioners now, at the subsequent stage, cannot claim any equity as they are bound by the order passed and were well aware of the chance that they were taking. The Division Bench of this Court in *Manmeet Sharma v. State of Haryana and others*, 2008 (4) SLR 498 has held that where eligibility itself is not there, then the admission cannot be regularized. The relevant paras read as under:--

6. In the prospectus, it has been clearly laid down that only candidates having 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together will be eligible for the Entrance Examination. Admittedly, the petitioner did not have 50% marks as required. In these circumstances, the petitioner being ineligible could not have been given admission.

7. Faced with the above situation, learned counsel for the petitioner sought to submit that the petitioner having made no misrepresentation and having paid the fee, the admission could not be cancelled. Reliance was placed on a DB judgment of this Court in *Ashu Singla v. Punjabi University, Patiala and another*, 2004 (2) RSJ 720.

8. We are unable to accept the submission. The petitioner was clearly ineligible and was aware about his ineligibility. No estoppel could arise in such a situation. The judgment relied upon is distinguishable. The University never approved the admission of the petitioner and did not allow the petitioner to appear in examination, as was the case in *Ashu Singla* (supra). As per the impugned order, admission of the petitioner was provisional and was never approved by the University. Equitable principle of promissory estoppel could not be invoked when a candidate was himself aware about his ineligibility. Reference may be made to judgment of the Hon"ble Supreme Court in *Central Airmen Selection Board and Another Vs. Surender Kumar Das*,

The writ petition is without any basis and no relief can be granted to the petitioners and accordingly the writ petition is dismissed and all interim orders are vacated.