
(1994) 11 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petn No. 7365 of 1993

Dr. Renu Bansal

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 15-11-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1995 P&H 329 : (1995) 1 RCR(Civil) 793

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : R.S. Bains, for the Appellant; A.K. Walia, AAG, for the Respondent

Judgement

1. Petitioner Dr. Renu Bansal through present petition filed by her under Article 226 of the Constitution of India takes exception to the admission

criteria to MD/ MS 40% non-PCMS quota candidates, according to which, it is pleaded, merit list is not prepared strictly as per merit position of

the candidates in the competitive entrance examination. The regulations determining admission criteria as contained in Regulations 1.2, 6.1 to 6.5 in

the prospectus for Competitive Entrance Test, 1993, need an immediate notice.

1.2 Admission Criteria :--

Admission to the Post Graduate Medical Courses shall be combiningly determined on the basis of the result to the Entrance Test (80 marks) and

the academic achievements of the candidate for 40% quota candidates/weightage given for the length of service in PCMS PCMS (Dental) for

60% quota candidates (20 marks).

6.1. A Combined merit list on the basis of performance of entrance test will be prepared.

6.2. The final merit of a candidate will be determined on the basis of performance of entrance test (80 marks) and previous record of MBBS/BDS

course non-PCMS/PCMS (Dental) graduate/weight age of length of service for PCMS/ PCMS (Dental) doctors (20 marks).

6.3. The selection in each speciality and institution will be based on merit-cum-choice of each candidate. For each discipline a waiting list of 25%

of the available seats will be prepared and vacancies, if any, will be filled latest by 31-8-1993 from amongst the candidates on the waiting list. No

admission will be made after 31-8-1993.

6.4. There will be separate merit list for 40% and 60% quota candidates.

6.5. Determination of inter se merit of candidates obtaining equal marks: In case of two or more candidates obtaining equal marks computed out of

80 marks secured in the entrance test and 20 marks of MBBS/ BDS examination for fresh graduates/weight-age of length of service for

PCMS/PCMS (Dental) candidates, the inter se merit of such candidates shall be determined as under:--

(i) Candidates obtaining higher marks in entrance test;

(ii) candidates obtaining higher marks in paper-II

(iii) candidates obtaining higher marks in paper-I

(iv) according to age, older getting preference over younger.

2. From amongst the regulations 1.2 to 6.5 in the prospectus of Competitive Entrance Test, as have been reproduced above, the offending

regulations are pleaded to be 1.2 and 6.2. Insofar as regulation 6.5 is concerned, contention of the petitioner is that if regulations 1.2 and 6.2 are

held to be illegal, consequential changes in Clause 6.5 would be necessitated.

3. Even though the precise grievance of the petitioner is as noticed above, yet the material facts culminating into this petition need a necessary mention.

4. Petitioner passed her MBBS examination from Government Medical College, Patiala, in the year 1992. She successfully completed her

internship at Rajindera Hospital, Patiala, in Feb., 1993. She qualified for the All India Entrance Examination held by All India Institute of Medical

Sciences New Delhi. She intended to do higher studies and accordingly filled the examination form for Competitive Entrance Test-1993 (herein

after to be referred to as CET) to be conducted by the Guru Nanak Dev Univeristy. Amritsar for admission to the Postgraduate Medical/ Dental

Course. In the State of Punjab only two Government Colleges conduct Postgraduate Medical/ Dental Course, namely, the Govt. Medical College,

Patiala and Govt. Medical College, Amritsar. In May 1993, she filled the examination form and date of CET was fixed as June 13, 1993 for which

she had already received the admit card. However, when the prospectus for CET-1993 containing the clauses referred to above, came to her

notice, she enquired from respondent-Colleges to know as to what was the exact number of seats available in different subjects so that she could

come to know whether there were sufficient number of seats for admission in the speciality she wanted to do. None of the Medical Colleges

obliged her with the information so required. When oral requests made by the petitioner to know the number of seats available in different subject

brought no tangible results, her father represented in writing to the Secretary. Department of Health & Family Welfare, Punjab, for removing the

discrepancy in the prospectus. It was highlighted in the prospectus aforesaid that allocation of 20% marks for academic achievement for non-

PCMS candidates was unwarranted and need to be removed. It was also pointed out that the students who achieved high position during MBBS

course were mainly sons and daughters of the doctors, who are well placed in Hospital and Medical Colleges. This favoured group created

frustration amongst the meritorious candidates as in most of the cases the top positions were unfairly cornered by the sons and daughters of serving

doctors. It was further pointed out that the so-called top rankers in the MBBS examination appear nowhere in the CET. Attention of respondent

No. 1 was invited to the fact that no such provision of marks for academic achievements was provided by AIIMSA, New Delhi or PCIMER,

Chandigarh or M.D.U., Roh-tak, It is pleaded that no other University in the country adds marks obtained in MBBS degree to the marks obtained

in the CET for preparing final merit list, and the very object of CET would be defeated if the marks of qualifying examination are taken into

consideration for preparing final merit list. It is further stated that provision of giving 20% marks was mischievously made under the head

Academic Achievements"" whereas the prospectus would manifest that this academic achievement has no special honour or high distinction

conferred on any particular candidate.

5. Before the matter is proceeded any further, it requires to be mentioned that Competitive Entrance Test for admission to Postgraduate Medical/

Dental Degree Courses (Three year Residency System) in the Government Medical/Dental Colleges at Patiala and Amritsar is held for is-service

candidates for whom quota fixed in 40% whereas remaining 60% seats are filled from amongst those who are not in service i.e. who are not

serving as PCMS/PCMS (Dental). Insofar as in-service candidates are concerned, for whom as mentioned above, quota is fixed as 40%,

weightage is for length of service in PCMS/ PCMS (Dental). Insofar as CET is concerned, the same is of 80 marks.

6. The basic contention of learned counsel appearing on behalf of the petitioner is that admission to MD/ MS has necessarily to be governed on the

basis of Competitive Entrance Test and no credit could be given to the academic achievements of the qualifying examination. The differing

standards adopted by various colleges insofar as studies, the course to be followed, examinations, standard of marking and many other things are

entirely different in the country and a student achieving higher marks in the qualifying examination because of different standards laid down by

different Colleges/Universities, cannot be said to be necessarily a better candidate than the one who has obtained lesser marks. It is further

contended that the Apex Court in numerous decisions rendered by it has already held that admission has to be governed on the basis of CET and

no credit can be given to the academic achievements of the qualifying examination. The mandate of the Surpeme Court has been meticulously

followed by all the Institutions, Universities and Colleges located in the Country like AIIMS, New Delhi, PGIMER, Chandigarh and MDU,

Rohtak whereas the Pubjab Government has innovated a method to dilute the decisions of the Supreme Court. It is further the case of petitioner

that very rationale CET would be lost if the marks of qualifying examination are taken into consideration. If the qualifying examination reflects the

academic achievements of the candidates, then there is no use of holding Entrance Test and inasmuch as the qualifying examination does not reflect

the real merit of a candidate, Entrance Test has been provided for and once that has been provided for, there cannot be any scope whatsoever for

still recognising the merit in the qualifying examination, even though to the extent of 20%.

7. This writ was admitted on August 24, 1993 when after hearing the matter on five consecutive dates, the reply was not filed. On September 23,

1993, learned counsel for the parties informed the Court that Guru Nanak Dev University was a necessary party and yet no notice had been issued

to it. That being so, notice was ordered to be issued to Guru Nanak Dev University through its Registrar for October 20, 1993.

8. Neither the State of Punjab nor the Guru Nanak Dev University has filed written statement. The matter has been contested only by respondent

No. 4 i.e. Government Medical College, Amritsar. Insofar as grievance of petitioner with regard to number of seats available in different subjects is

concerned, it is pleaded in the written statement that P.6. Entrance Test for admission to Postgraduate courses Session-1993, was conducted by

Guru Nanak Dev University, Amritsar and the list regarding number of seats available in each Postgraduate course/ College was published in the

Indian Express Newspaper dated July 9, 1993 by the Coordinator, PG Entrance Test, 1993, as addendum to prospectus (Annexure R-2).

Nothing on that count was, thus, argued by learned counsel for the petitioner. However, insofar as main point involved in the case is concerned, all

that respondent No. 4 has to say in the written statement is that the authorities concerned apprehended that by eliminating 20 marks of academic

career for fresh graduates under 40% quota, would eliminate the academic charm during under-graduate course/studies resulting into fall of

standard in undergraduate teaching. It is further the case of respondent No. 4 that the Medical Colleges at Amritsar and Patiala, where the facilities

exist, are maintained and financed by the Punjab Government and it is the prerogative of the Government to formulate policy for admission of

candidates to the said Institutions. As per notification dated February 8, 1993, the Government with a view to determine the merit of the

candidates, had fixed 80 marks for PG Entrance Test and 20 marks on the basis of academic achievements during MBBS studies. Insofar as legal

proposition, as has been noticed above is concerned, all that respondent No. 4 has to say is that the same is legal and this Court may decide the

matter.

9. From the perusal of the written statement, it is, however, apparent that whereas, the proposition of law as canvassed by the petitioner has not been seriously disputed, yet a two-fold defence has been projected. In the first instance it is stated that it was apprehended that by eliminating 20 marks of academic career for fresh graduates under 40% quota, will eliminate the academic charm during undergraduate course/studies resulting into fall of standard in undergraduate teaching and secondly, that it is the prerogative of the Government to formulate policy for admission to Medical Colleges, Amritsar and Patiala.

10. Insofar as State of Punjab is concerned, as mentioned above, the matter has not been contested as no written statement was filed either when the matter was at motion stage or even after the writ was admitted.

11. The contention of learned counsel for the petitioner. Mr. R. S. Bains, Advocate, as noticed above, in the very nature of things has to be tested on the basis of Article 14 of the Constitution of India which strikes at arbitrary action and, thus, necessarily results in negation of equality. The doctrine of classification may be a judicial formula for determining whether the legislative or executive action is arbitrary and, therefore, results in denial of equality. If the classification is not reasonable or does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. In view of the settled law, as noticed above, the only question that requires consideration is as to whether by providing 20% marks for the qualifying examination, the students competing for post graduate courses have been treated differently, thus, violating the equality clause enshrined in Article 14 of the Constitution of India.

12. The entrance test facilitates the as-sessment of comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities. This was said by the apex Court for the first time in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*,). The observations as mentioned above came to be made by the Supreme Court while considering the challenge of students to the

entrance test and ignoring the marks obtained by them in the qualifying examination. The petitioners in the said case had applied for admission in the College to the first semester of the B.E. course in response to a notice issued by the College for such admission. They appeared in a written test consisting of 100 marks as well as an interview consisting of 50 marks but could not be selected for admission. They, therefore, filed petitions contending that the selection was violative of Article 14 on the ground that the Society acted arbitrarily in the matter of granting of admissions, first by ignoring the marks obtained by the candidates at the qualifying examination; secondly, by relying on viva voce examination as a test for determining comparative merit of the candidates; thirdly, by allocating as many as 50 marks for the viva voce examination as against 100 marks allocated for the written test; and lastly, by holding superficial interviews lasting only 2 or 3 minutes on an average and asking questions which had no relevance to assessment of the suitability of the candidates with reference to the factors required to be considered at the viva voce examination.

It is while considering the challenge of the candidates to the entrance test that the Supreme Court observed that "the entrance test facilitates the assessment of comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination". Although, no written statement has been filed by the State of Punjab and it is only the Guru Nanale Dev University which has filed by written statement, yet it has not been denied that the candidates, who competed for the post graduate courses, in open category, had passed their qualifying examinations from different universities located in India as also within the State of Punjab itself.

13. Different standard of education adopted by various universities in the courses, examinations. standard of marking and other factors were perhaps the basic determining factors for holding an entrance test. It was felt that in some universities courses that were followed were far easier as compared to other universities as also that standard of teaching and marking was entirely different. It is for that precise reason that the Supreme Court in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, , ordered that "no State Government or University

or Medical College shall grant admission to students to fill the minimum 30% open seats not reserved on the basis of residence requirement or

institutional preference for the MBBS course or to 50% open seats not reserved on the basis of institutional preference for post graduate courses

such as M D. MS and on the basis of comparison of the marks obtained by them at different qualifying examinations held by different States/

Universities and that admissions must be based on evaluation of relative merits through an entrance examination which would be open to all

qualified candidates throughout the country."" It requires to be reiterated that this Court is dealing with the admissions to post graduate courses i.e.

MD/MS. Insofar as super-specialities of MD/MS are concerned, reservations have almost been done away with by judicial pronouncements and

with regard to specialities of MD/MS also, effort should be to get best candidates. The class of doctors as a whole and specialists in particular, are

dealing with human lives and anything that might prevent the best talent to come up should not be accepted easily. Even though, an entrance test

has been provided but allocation of 20 marks for academic career i.e. giving preference to the students on the basis of their qualifying marks

would, in considered view of this Court, be arbitrary. It cannot be denied that with the kind of competition amongst the students that is prevalent

these days, one mark or even fraction of a mark makes all the difference between admission and denial thereof. That apart, if the criteria for

admissions based upon entrance examination is arbitrary, the same would be true even with regard to a part of the same. The principles that govern

the admissions based entirely on qualifying marks would apply to a part of the said criteria i.e. to the extent of 20%.

14. Single Bench of Jammu & Kashmir High Court in *Miss Anjum Afshan v. State of J. & K.*, AIR 1994/NOC, 313 adversely commented upon

giving of weightage to qualifying exam and reserving 25 points for the same and held the same to be illegal and violative of Article 14 of the

Constitution of India. It is not clear from the judgment as to what were the total points but it is rather certain that 25 points were not total points

fixed for selection.

15. Insofar as the twofold defence projected by respondent No. 4 is concerned and which has been noticed above, suffice it to say that the same

cannot hold any ground in view of the settled law on the point as noticed above. Elimination of 20 marks of academic career for fresh graduates

under 40% quota cannot possibly eliminate the academic charm during undergraduate course/studies. Those who are really interested in teaching

or the students who are desirous of excelling in their career cannot be expected to work less simply for the reason that the marks obtained by them

in the qualifying examination would not carry any weight in the entrance test. The stand of respondent No. 4, as noticed above, does not go

beyond the realm of conjectures and has, thus, to be repelled. Insofar as providing of 20 marks for the academic career based upon prerogative of

the Government to formulate a policy for admission to Medical Colleges is concerned, it can easily be held to be hardly any defence that can

possibly come in the way of petitioner in challenging the admission criteria.

16. For the reasons recorded above, this petition succeeds. Regulations 1.2 and 6.2 insofar as they earmark 20 marks for academic achievements,

which indisputedly is with regard to qualifying examination, as is also clear from Regulations 6.2 and 6.5 are quashed. Consequent changes for

determination of inter se merit, as mentioned in regulation 6.5 shall have to be made thereby ignoring 20 marks for MD/MS courses. No

meaningful relief can, however, be granted to the petitioner inasmuch as the entrance test was held as far back as in June, 1993 and based upon

the said test, number of students, who secured admission, must have undergone a substantial part of their course. It is only for future admissions

that the respondents are directed not to take into consideration marks obtained by the students in MBBS/ BDS i.e. qualifying examinations. This

writ is allowed in the manner and to the extent as indicated above. Parties are, however, left to bear their own costs.

17. Order accordingly.