
(2015) 09 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1427 of 2015 (O&M)

Gina Kaur Gill and Others

APPELLANT

Vs

Rajat Jain and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 1
Indian Medical Council Act, 1956 — Section 19-A, 33

Citation : (2016) 1 SCT 520

Hon'ble Judges : S.S. Saron, J;Amol Rattan Singh, J

Bench : Division Bench

Advocate : D.S. Patwalia, Senior Advocate and Sehaj Bir Singh, for the Appellant; G.S. Bal, Senior Advocate and Deepak Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J—Mr. D.S. Patwalia, Senior Advocate has filed CM application under Order 1 Rule 10 of the Code of Civil Procedure ("CPC" - for short) for impleading Parneet Kaur Grover as a party to the appeal. The CM is supported by an affidavit of Gina Kaur Gill (appellant No. 1). The same is taken on record.

2. Registry to number the CM.

3. Parneet Kaur Grover is impleaded and added as respondent No. 8 to the appeal.

4. Notice of motion.

5. On the request of the Court keeping in view the deadline of 30.9.2015 fixed by the Hon'ble Supreme Court for finalizing admissions to Medical/BDS Colleges, Mr. Sanjeev Sharma Senior Advocate with Mr. Vishal Sodhi Advocate has put in appearance for respondents No. 3 and 4; Mr. G.S. Bal Senior Advocate with Mr. Deepak Gupta Advocate has put in appearance for respondents No. 1 and 2 and Mr. Sukhdeep Singh Brar Advocate has put in appearance for the added

respondent No. 8 Parneet Kaur Grover.

6. Heard learned counsel for the parties at full length.

7. This appeal has been filed by the appellants against the judgment and order dated 22.09.2015 passed by the learned Single Judge in CWP No. 17538 of 2015 filed by Rajat Jain and Shivani Gupta (respondents No. 1 and 2 herein) and CWP No. 17569 of 2015 filed by Parneet Kaur Grover (added respondent No. 8). Both the writ petitions were disposed of by a common order. Therefore, a single appeal has been filed by the appellants by impleading Parneet Kaur Grover, who is the affected party in the appeal arising out of CWP No. 17569 of 2015, as an added respondent No. 8 in the present appeal; besides, a common judgment has been delivered in the case. Therefore, filing of more than one copy of the judgment is dispensed with in terms of the proviso to Order 41 Rule 1 CPC.

8. The respective petitioners namely Rajat Jain and Shivani Gupta (now respondents No. 1 and 2) and Parneet Kaur Grover (now respondent No. 8) filed their respective civil writ petitions seeking quashing of the notice dated 18.08.2015 issued by the Director Principal Government Medical College and Hospital, Sector 32, Chandigarh (respondent No. 4). In terms of the said notice dated 18.8.2015, the Government Medical College and Hospital, Sector 32, Chandigarh ("GMCH, Chandigarh" - for short) clarified that the GMCH, Chandigarh had conducted entrance examination of Non-Resident Indian ("NRI" - for short) students for admission in the MBBS Course 2015 which was conducted on the basis of Medical Council of India ("MCI" - for short) Circular dated 16.01.2015. Thereafter, as per communication received from the MCI vide letter dated 28.07.2015, the said circular dated 16.01.2015 stands quashed as per orders of the Hon"ble Supreme Court of India in SLP (C) Nos. 16229-16230 (upholding the judgment of the Karnataka High Court). Hence the criteria followed in 2014 for admissions to MBBS NRI quota seats will govern the selections in 2015. The petitioners in the civil writ petitions, who are now private respondents, assailed the admission procedure for admission to MBBS in respect of NRI quota seats in the GMCH, Chandigarh. A further prayer was made to admit the petitioners in their respective writ petitions to the MBBS Ist year course on their clearing the competitive entrance examinations for NRI students held by the Panjab University, Chandigarh and to adhere to the terms and conditions of admissions as mentioned in the prospectus issued for the purpose.

9. The three petitioners in the respective writ petitions had applied for admission to the MBBS course of the GMCH, Chandigarh against the NRI quota seats. They had appeared for the common entrance test and were successful. They were held to be eligible for admissions. Their merit had, however, been recalculated on the basis of the qualifying marks in the plus two examinations against the six seats earmarked for the NRI quota.

10. The facts of the case are that the GMCH, Chandigarh issued a centralized admission prospectus for MBBS/BDS courses for the session 2015 on

01.05.2015. The said prospectus inter alia notified that there were total 100 seats (tentative). The permitted and recognized seats were 50, and 50 seats had been applied for renewal for which permission was awaited. This it is mentioned was subject to approval of enhanced seats from 50 to 100 by MCI. The seats that were earmarked were as follows; for All-India Quota - 15 seats, Central Pool - 2 seats, Foreign Students (NRI) - 6 seats, U.T. Pool for members of the Scheduled Castes (15%) - 12 seats, Physical Disability (3%) - 2 seats and General - 63 seats i.e. total of 77 seats. In the present appeal, the dispute relates to the six seats earmarked for foreign students (NRI).

11. The eligibility criteria and admission procedure was separately given for 77 seats of Chandigarh pool i.e. General category, SC category and Physical Disability. It was inter alia provided that a candidate must secure the prescribed minimum percentage of marks together in the 12th standard examination i.e. general category not less than 50%, SC category not less than 40% and physical disability category not less than 45%. Similarly, certain other conditions were provided for reserved seats for members of the Scheduled Castes and for candidates with physical disability. Eligibility criteria and admission procedure for central pool seat was provided. Besides, the eligibility and admission procedure for 15% All-India quota seats was provided.

12. The eligibility criteria and admission procedure for Foreign Indian students (NRI category seats) with which the present appeal relates was also given. Conditions 7 to 13 were as follows:-

"7. NRI candidates will have to obtain the eligibility and equivalence certificates for the qualifying examination (equivalent to 10+2 examination) from Panjab University, Chandigarh.

8. State level entrance test will be conducted for candidates seeking admission against NRI category seats by Panjab University, Chandigarh on the pattern AIIPMT. Date and venue of this entrance test will be notified separately on GMCH website.

9. A candidate must have secured not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test to be eligible.

10. Admission will be made strictly on the basis of the merit/rank obtained in this entrance test.

11. Admission to NRI category seats will be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration from time to time. These candidates will be divided into two categories which are as follows:

(a) Category-1: This category includes NRI candidates with ancestral background of Chandigarh. To be eligible for this category candidate should fulfill one of the following criteria:

(i) Grandparents/parents/self should have been resident of Chandigarh for a

minimum period of 5 years at any time since the origin of Chandigarh.

(ii) Own/owned immovable property in the name of grandparents/parents/self in Chandigarh for at least 5 years at any time since the origin of Chandigarh.

Important Note: A certificate to the effect of either of the above mentioned criteria is required from DC-cum-Estate Officer/Municipal Corporation of Chandigarh or any other competent Government authority.

(b) Category-II: This category includes NRI candidates who have ancestral background of States/UTs other than UT Chandigarh. A certificate to this effect from competent Government authority has to be submitted.

12. First preference will be given to Category-I candidates.

13. If sufficient number of candidates under Category-I are eligible and available then they will be admitted first even if candidates under Category-II are higher in merit.

13. In terms of the above conditions and criteria, a candidate seeking admission to the MBBS course in the GMCH, Chandigarh was required to secure not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test. Besides, there were to be two categories i.e. category I and category II for NRI candidates. Category I relates to NRI candidates with ancestral background of Chandigarh for which the criteria has been mentioned. Category II relates to NRI candidates who have ancestral background of States/Union Territories other than Union Territory of Chandigarh. It is not in dispute that the appellants fall under category I while the private respondents namely Shivani Gupta, Pankaj Jain and Parneet Kaur Grover fall under category II.

14. The tentative fee structure for various categories was given, which is Rs. 20590/- (approximately) for General Category (UT/AII-India Quota) and Physical Disability Category/Central Pool. For the members of the Scheduled Castes Category (U.T./AII-India Quota) it is Rs. 16340/- (approximately). For the NRI Category, total charges is mentioned as US \$75000 + US \$700 registration charges + other University charges as applicable in lump sum at the time of admission. In addition, it is mentioned that college security of Rs. 50,000/- would be charged from NRI students at the time of admission which would be refunded after completion of the course. There is an option to pay fee in installments instead of paying in lump sum for which the candidates is to give bank guarantee as has been notified.

15. The appellants did not secure 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test to be eligible. This condition of securing not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together for the NRI quota seats was provided for by the MCI circular dated 16.01.2015 and was incorporated in the prospectus of the GMCH, Chandigarh. The said circular reads as under:-

"Sub: Conduct of Entrance Examination for NRI students for admission in MBBS Course - Regarding

Sir/Madam,

I am directed to state that the matter with regard to the admissions of students in the MBBS course under NRI quota was placed before the Executive Committee of the Council at its meeting held on 16/12/2014. The Committee noted that the Hon"ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, AIR 2005 SC 3226 : (2005) 4 CTC 81 : (2005) 3 ESC 373 : (2005) 7 JT 313 : (2004) 8 SCC 139 : (2005) 2 SCR 603 Supp : (2005) 2 UJ 1176 : (2005) AIRSCW 3923 : (2005) 5 Supreme 544 has held as under:-

...A limited reservation of such seats, not exceeding 15%, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by...

The reading of the aforesaid would show that the Hon"ble Supreme Court has held that in admissions under the NRI quota, merit cannot be compromised. According to Regulation 5 of the Graduate Medical Education Regulation, 1997, the selection of students to a medical college shall be based solely on the merit of the candidate. Further, Regulation 5(ii) of the Graduate Medical Education Regulation, 1997, stipulates that in States having more than one University/ Board/Examining Body, a competitive entrance examination should be held, so as to achieve a uniform evaluation for the reason that there should be variation of standards at qualifying examinations conducted by different agencies.

The Committee further noticed that NRI students apply to individual medical colleges in different States. These students can be from more than one country and therefore, necessarily would have taken qualifying examinations from different Boards/examining bodies. It is, therefore, essential to have a uniform evaluation of their academic ability-marks so as to make a proper merit list. Therefore, the principle embodied in Regulation 5(ii) will also be attracted to admissions being made in the NRI category. Hence, it is compulsory to have an Entrance Test for NRI students so as to determine their inter-se merit in order to enable them to exercise preference for admissions to the various medical colleges. Since NRI students are normally making applications on State wise basis, it may even be feasible to have the test individually for each State so that there can be a common merit list for NRI students who apply to that particular State. In view of the aforesaid position, the Executive Committee of the Council has decided that from the Academic Year 2015-16 onwards all admissions in NRI category shall be on merit which shall be determined through the Common Entrance Test.

Accordingly all concerned are directed to ensure that admissions in NRI category are made through a Common Entrance Test (CET) from a merit list drawn from

the CET, from the Academic Year 2015-16."

(Emphasis added)

16. The above circular dated 16.01.2015, it may be noticed, was issued on the basis of decision of the Executive Committee of the MCI at its meeting held on 16.12.2014. A reference in the circular was made to para 131 of the Supreme Court decision in P.A. Inamdar and Others Vs. State of Maharashtra and Others, AIR 2005 SC 3226 : (2005) 4 CTC 81 : (2005) 3 ESC 373 : (2005) 7 JT 313 : (2004) 8 SCC 139 : (2005) 2 SCR 603 Supp : (2005) 2 UJ 1176 : (2005) AIRSCW 3923 : (2005) 5 Supreme 544 . The said circular dated 16.01.2015 was assailed before the Hon"ble Karnataka High Court in Shri Basaveshwar Vidya Vardhak Sangha v. Medical Council of India [WP Nos. 102850-102851/2015 (EDN-MED-ADM)] and other connected writ petitions decided on 17.04.2015. The Hon"ble Karnataka High Court framed various questions for consideration and question (5) relates to the issuance of the circular dated 16.01.2015 on the basis of the deliberations/report of the Executive Committee of MCI in its meeting held on 16.12.2014 prescribing a Common Entrance Test to fill up seats in the NRI category. Question (6) relates to the Graduate Medical Education Regulations, 1997 ("1997 Regulations" - for short), which during the course of hearing have been heavily relied upon by Sh. G.S. Bal, learned Senior Advocate for the respondents Shivani Gupta and Pankaj Jain as also Sh. Sukhdeep Singh Brar, Advocate for the respondent Parneet Kaur Grover. Questions (5) and (6) as formulated by the Hon"ble Karnataka High Court read as under:-

"(5) Whether the Circular issued by MCI based on the deliberations/report of the Executive Committee of the Council in its meeting held on 16.12.2014 prescribing CET to fill up seats in NRI category can be said to be in exercise of the power and authority conferred as per the MCI Act, particularly Sections 19-A and 33, or for that matter can it be traceable to Regulation 5(2) of Graduate Medical Education Regulations, 1997? What is the scope, purport and effect of Regulation 5(1) and 5(2) of Graduate Medical Education Regulations, 1997?

(6) Whether the principles embodied under Regulation 5(2) of the Graduate Medical Education Regulations, 1997 can be imported for NRI candidates in the face of the tenor of the provision? Whether the Circular has impinged upon the rights recognized in the medical colleges through their associations to have their own method of selection of NRI students exercising their discretion as long as it has not found to be and shown to be whimsical and arbitrary. Particularly because admissions to medical colleges, to deemed universities, private college associations, COMED-K, Association of Minority Institutions and in some cases individual institutions like St. John's Medical College and CMC Vellore have been permitted by having their own CET for assessing the inter se merit of students other than NRI category students. In the wake of this, whether a State-wise CET for NRI students can be introduced by virtue of the impugned circular?

17. The Hon"ble Karnataka High Court in its detailed and elaborate decision

dated 17.04.2015 held that MCI without doubt was the highest body in the Country to oversee the quality of medical education and admittedly, it i.e. MCI was a party before the Supreme Court in P.A. Inamdar's case (supra), which was decided on 12.08.2005. It was noticed that Regulation 5(ii) of the 1997 Regulations came into force with publication in the Gazette dated 17.05.1997. The said 1997 Regulations were amended vide notification described as "Regulations on Graduate Medical Education (Amendment) 2010". These were subject matter of consideration in the case of Christian Medical College Vellore and Others Vs. Union of India and Others, (2013) 12 AD 311 : (2013) 9 SCALE 226 : (2014) 2 SCC 305 : (2014) 1 SCT 390 . It was noticed that the foundation of the impugned circular dated 16.01.2015 was a portion of para 131 of P.A. Inamdar's case (supra), the words used in the said case were very specific and these were "legislation" or "regulation". Therefore, according to the pronouncements of the Supreme Court, it was held that it was either for the Central Government or the State Government to bring in legislations if any to regulate the admissions. The impugned circular in the considered opinion of the Hon"ble Karnataka High Court was contrary to the pronouncements of the Hon"ble Supreme Court and ran counter to the tenor of the directions contained therein and therefore was unsustainable. It was concluded that Section 33 of the Indian Medical Council Act, 1956 CIMC Act" - for short) which dealt with the power of the MCI to make regulations made it clear that prior sanction of the Central Government had to be obtained for making regulations in respect of matters provided for under the said Section. Without following any such procedure, by issuing a Circular i.e. circular dated 16.01.2015, it was held that the MCI had sought to introduce entrance test for NRI category students as per the report of the Executive Committee of the Council, which was apparently contrary to the nature of the power invested with the Committee and procedure prescribed under the IMC Act.

18. The further question that fell for consideration was whether there was any arbitrariness in not subjecting the NRI students to a common entrance test and leaving it to the discretion of the private medical colleges. In the considered view of their Lordships of the Karnataka High Court, this issue was no more res Integra. It was held that the right of the private medical colleges to fill up small percentage of seats by the NRI students was now fairly well settled. Freedom to run private institutions and their right to conduct examinations for admitting students was also recognized. It was, however, added that the recognition of this right is to be made subject to future "legislation" or "regulation" by the State. In the circumstances, the Hon"ble High Court was of the considered view that the impugned circular i.e. the circular dated 16.01.2015 was not sustainable in view of the pronouncement of the Supreme Court in P.A. Inamdar's case (supra) and other judgments referred to in the order. Accordingly the circular dated 16.01.2015 was quashed.

19. Special leave to appeal petition (C) No. 16229-16230/2015 with SLP No. 16307-16308/2015 arising out of the final judgment and order dated 17.04.2015

of the Karnataka High Court titled Medical Council of India v. K.L.E. University and another was dismissed by the Hon''ble Supreme Court on 06.07.2015.

20. In consequence of the judgment of the Karnataka High Court dated 17.04.2015, the Director Principal Medical College Hospital, Sector-32, Chandigarh (respondent No. 4) addressed a letter dated 17.07.2015 to the Secretary, Medical Council of India, New Delhi regarding conduct of examination for NRI students for admission in MBBS Course. A reference was made to the MCI letter (circular) dated 16.01.2015 intimating that the Karnataka High Court vide its order dated 17.04.2015 had quashed the said circular. Therefore, it was requested to intimate whether the circular dated 16.01.2015 regarding conduct of entrance examination for NRI students for admission in MBBS Course was still in order/valid.

21. The Medical Council of India vide its letter dated 28.07.2015 replied that the MCI circular dated 16.01.2015 had been quashed and set aside by the Hon''ble High Court of Karnataka vide its judgment dated 17.04.2015 and the Special leave petition filed by the Council before the Hon''ble Supreme Court in this regard had also been dismissed on 09.07.2015 (sic. - 06.07.2015).

22. The Director Principal, Government Medical College and Hospital, Sector 32, Chandigarh (respondent No. 4) issued a notice dated 18.08.2015 that on the basis of letter dated 16.01.2015 the GMCH, Chandigarh had conducted the entrance examination for NRI students for admissions to the MBBS course 2015. Now, as per communication dated 28.07.2015, received from the MCI, the circular dated 16.01.2015 stood quashed by the Hon''ble Supreme Court of India in SLP (C) Nos. 16229-16230 of 2015 (upholding the judgment of the Karnataka High Court). Hence the criteria followed in 2014 for admission to MBBS NRI seats would govern the selections in 2015.

23. As already noticed, it is the said circular which was assailed by the private respondents by way of writ petition. The position in fact is that the circular dated 16.01.2015 that had been issued for admission against NRI quota seats to the MBBS course had been quashed by the Hon''ble Karnataka High Court vide its judgment dated 17.04.2015.

24. Sh. G.S. Bal, learned Senior Advocate and Sh. Sukhdeep Singh Brar, Advocate appearing for the private respondents have, however, contended that the quashing of the said circular was only applicable in respect of NRI seats in private medical colleges and the same principle would not apply to government colleges where merit is the criteria. A strong reliance has been placed on Regulation 5(ii) of the 1997 Regulations which provides that selection of students to medical colleges is to be based solely on merits of the candidates and for determination of merit, the criteria laid down therein is to be adopted uniformly throughout the country. A reference is also made to the observations of the learned Single Judge that the said Regulation 5 of the 1997 Regulations would go to show that in order to avoid variation of standards in qualifying examinations,

conducted by different agencies, the MCI had made it mandatory to hold a competitive entrance test in which minimum 50% marks were required to be secured.

25. After consideration of the matter, it is to be noticed that the MCI circular dated 16.01.2015 indeed stands quashed by the Hon"ble Karnataka High Court judgment dated 17.04.2015 against which SLP in the Supreme Court has also been dismissed on 06.07.2015. The Hon"ble Karnataka High Court quashed the said circular issued by the MCI on the ground that the circular could be issued only by way of a "legislation" or a "regulation", besides, prior sanction of the Central Government was to be obtained for making regulations in respect of matters provided under Section 33 of the IMC Act. A reference was also made to Section 19-A of the IMC Act, which provides for prescription of minimum standards of medical education and the method and manner of providing such regulations. It was held that the Executive Committee of the MCI could not proceed to amend or interpret the regulations by issuing the impugned circular without following the prescribed procedure under Section 19-A of the IMC Act. The same had indeed not been followed in respect of the MCI circular dated 16.01.2015.

26. It may also be noticed that the learned Single Judge had formulated legal issues and issue No. (ii) as framed was to the effect whether the judgment of the Hon"ble Karnataka High Court dealt only with the issue of admissions made to the private un-aided medical colleges and whether the observations made therein would also affect the aided medical colleges and whether the circular dated 16.01.2015 still held the field. After consideration of the matter, the learned Single Judge held as follows:-

"Resultantly, the circular had been quashed and therefore, the argument of the counsel for the petitions that the decision would not bind the Government Medical Colleges, is without any basis. Once the circular had been struck down by the High Court, it would be nonest and void, as such, since the Division Bench had not restricted the effect only to the Private Unaided Medical Colleges."

27. Therefore, it is now quite evident that the circular dated 16.01.2015 issued by the MCI is nonest and void.

28. Issue No. (iii), as framed by the learned Single Judge was to the effect whether the private respondents having taken the Common Entrance Test and having failed to qualify and being satisfied with the procedure prescribed, could not justify their consideration for their admission on a separate criteria which was contrary to the prospectus itself. As regards the prospectus issue No. (i) was framed to the effect whether the terms of the prospectus had a force of law and binding on the administration also and on the applicants and whether the decision to resort to admission on the strength of +2 marks would be totally contrary to what had been held out and whether the petitioners (now private respondents) had a vested right.

29. The learned Single Judge held that the criteria as laid down in the prospectus was to be followed and even otherwise, the appellants being lower in merit than the private respondents would yet steal a march over them. Keeping in view the 1997 Regulations it was held that the ends of justice would be served if the petitioners (now private respondents) who had been successful in the Common Entrance Test which was held under the supervision of the Panjab University, Chandigarh are held entitled for admission on the strength of the procedure which had been notified, advertised, adopted and followed; rather than in the midst, a deviation be done from the procedure, which the administration had done leading the candidates (private respondents) to unnecessarily litigate and approach this Court. As regards the prospectus, it was held that the terms of the prospectus had a binding force of law on the administration and on the applicants and the petitioners (now private respondents) had a vested right on the declaration of the results having qualified cannot be divested of their right of admission.

30. In regard to the above two issues as formulated by the learned Single Judge, it is to be noticed that the prospectus issued at the time of admission indeed has the force of law. However, in the present case the prospectus that was issued with regard to the NRI quota seats of the GMCH, Chandigarh, the requirement for the candidates to secure not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the Common Entrance Test to be eligible, was based on the MCI circular dated 16.01.2015. The said circular, as already noticed, has been set aside and quashed by the Karnataka High Court and the GMCH, Chandigarh has also issued a notice dated 18.08.2015 in this regard. Thereafter an amended prospectus has also been issued. Therefore, when the basis of a condition prescribed in the prospectus has been quashed and held to be a nullity by a judicial order, the same is to be taken as having been inoperative, redundant and otiose from its inception. This is for the reason that it is well known that the Courts do not legislate and only interpret the law and when a particular provision is interpreted then it declares the law and it is to be taken the law as it always had been.

31. The Supreme Court in the case of Sarwan Kumar and Another Vs. Madan Lal Aggarwal, AIR 2003 SC 1475 : (2003) 1 JT 607 : (2003) 1 SCALE 722 : (2003) 4 SCC 147 : (2003) 1 SCR 918 : (2003) 1 UJ 513 : (2003) AIRSCW 813 : (2003) 1 Supreme 946 held that when the Court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood from the beginning as per its decision. In Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, AIR 1990 SC 2023 : (1990) 3 JT 552 : (1991) 1 LLJ 574 : (1990) 2 SCALE 338 : (1990) 4 SCC 55 : (1990) 3 SCR 883 : (1990) 2 UJ 594 , it was held that when the Court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. In Lily Thomas, Vs. Union of India and Others, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE

176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 , the Hon"ble Supreme Court rejected the contention that the law declared in Smt. Sarla Mudgal, President, Kalyani and others Vs. Union of India and others, AIR 1995 SC 1531 : (1995) CriLJ 2926 : (1995) 2 DMC 351 : (1995) 4 JT 331 : (1995) 3 SCALE 286 : (1995) 3 SCC 635 : (1995) 1 SCR 250 Supp : (1995) 2 UJ 764 , in which it was declared the second marriage of a Hindu husband after conversion to Islam without having the first marriage dissolved under the law to be illegal was prospective in operation and could not be applied to persons who had solemnized their marriage in violation of the mandate of law prior to the date of the judgment. The Supreme Court held that it had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law.

32. Therefore, the circular dated 16.01.2015 having been declared to be illegal and without any legislative sanction, it is to be taken that this had always been the law and the circular was invalid from its very inception. Therefore, the circular itself having been invalidated the consequential incorporation of the same in the prospectus is also invalid and inoperative. In the circumstances, though the terms contained in the prospectus are binding, however, in case the prospectus contained conditions which have been invalidated by a judicial order, the same is invalid for all purposes from its inception. In fact even the learned Single Judge as noticed above has held the same to be nonest and void and has held it to be not restricted to Private Unaided Medical Colleges. In the circumstances, the clause contained in the prospectus which has been invalidated by a judicial order cannot be made applicable.

33. The procedure and criteria that was in force for selecting candidates for the NRI quota seats in the GMCH, Chandigarh before the issuance of the circular dated 16.01.2015 would be applicable and in fact had been made applicable by the GMCH, Chandigarh vide its letter dated 18.08.2015 in view of the judgment of the Karnataka High Court dated 17.04.2015 and dismissal of the SLP against the same on 06.07.2015. In accordance with the earlier criteria which became applicable and operative, the appellants were eligible to apply for admissions to the NRI quota seats in the GMCH, Chandigarh inasmuch as there was no requirement for them to have secured not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test to be eligible. In fact the college (respondent No. 4) issued an amended prospectus in which in respect of the NRI category seats, the eligibility inter alia provided in clauses 5 to 11 as follows:-

5. No entrance test is required for candidates seeking admission against NRI category seats.

6. The candidates must have passed in the subjects of Physics, Chemistry,

Biology/Biotechnology and English individually in the qualifying examination (equivalent to 12th standard) in the first attempt securing minimum percentage of 50% marks in the aggregate of Physics, Chemistry and Biology/Biotechnology.

7. The candidate must provide the certificate of 10+2/pre-medical/of 10+2+3 system qualifying examination from any University/Board showing detailed marks/explanation sheets of grade. The candidates must provide the percentage marks in Physics, Chemistry, Biology/Biotechnology as well as English of both Class 10+1 and 10+2 level.

8. NRI candidates will have to obtain the eligibility and equivalence certificates from the qualifying examinations (equivalent to 10+2 examination) from Panjab University, Chandigarh.

9. Admission to NRI category seats will be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration from time to time. These candidates will be divided into two categories which are as follows:-

a) Category-1: This category includes NRI candidates with ancestral background of Chandigarh. To be eligible for this category candidate should fulfill one of the following criteria:

i Grandparents/parents/self should have been resident of Chandigarh for a minimum period of 5 years at any time since the origin of Chandigarh.

ii Own/owned immovable property in the name of grandparents/parents/self in Chandigarh for at least 5 years at any time since the origin of Chandigarh.

Important Note: A certificate to the effect of either of the above mentioned criteria is required from DC-cum-Estate Officer/Municipal Corporation of Chandigarh or any other competent Government authority.

b) Category-II: This category includes NRI candidates who have ancestral background of States/UTs other than UT Chandigarh. A certificate to this effect from competent Government authority has to be submitted.

10. First preference will be given to Category-I candidates.

11. If sufficient number of candidates under Category-I are eligible and available then they will be admitted first even if candidates under Category-II are higher in merit.

34. The categorization of the NRI quota seats for the GMCH, Chandigarh is the same as it was in the un-amended prospectus; however, the requirement of securing 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test for the NRI quota seats in the GMCH, Chandigarh to be eligible, has been omitted. Rather it has been provided that no entrance test is required for candidates seeking admission against NRI category seats. Besides, the requirement now is that the candidates must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually in the

qualifying examination (equivalent to 12th standard) in the first attempt securing minimum percentage of 50% marks in the aggregate of Physics, Chemistry and Biology/Biotechnology. It may be noticed that the appellants are in Category I while the respondents are in Category II. Therefore, according to the procedure and criteria now applicable even though the appellants are lower in ranking on merit, they are to be admitted first even if candidates under Category II are higher in merit.

35. Shri G.S. Bal, Senior Advocate and Shri Sukhdeep Singh Brar, Advocate for the private respondents have, as already noticed, strenuously opposed this course and submitted that Regulation 5(ii) of the 1997 Regulation issued by the MCI cover the field and these would in any case be applicable. Regulation 5 of the 1997 Regulations envisages that the selection of students to a medical college shall be based solely on the merit of the candidate. Further, Regulation 5(ii) of the 1997 Regulations stipulates that in States having more than one University/Board/Examining Body, a competitive entrance examination should be held, so as to achieve a uniform evaluation for the reason that there should be variation of standards at qualifying examinations conducted by different agencies. In accordance with the said 1997 Regulations, according to learned counsel for the private respondents, the variation of standards in qualifying examinations conducted by different agencies, the MCI had made it mandatory to hold a competitive test in which minimum 50% marks have to be secured. These according to learned counsel for the private respondents are applicable even to NRI quota seats in the GMCH, Chandigarh. Shri D.S. Patwalia, Senior Advocate for the appellants has, however, submitted that these are clearly inapplicable to NRI quota seats in the GMCH, Chandigarh and this having been provided for in the prospectus on the basis of a circular that has been invalidated cannot be again brought into force by another method. Besides, the said 1997 Regulations were considered by the Karnataka High Court in its judgment dated 17.04.2015 and yet the Hon'ble Court did not incorporate the condition of securing 50% marks in the Common Entrance Test for admission to MBBS course.

36. This aspect, however, for the present need not be gone into as after carrying out the exercise of the candidates seeking admissions to the six NRI quota seats in the GMCH, Chandigarh, we find that the appellants as well as private respondents would be even otherwise entitled to the six NRI quota seats in the GMCH, Chandigarh. The category wise position of the NRI seats in the GMCH, Chandigarh is as follows:-

Category I

Category II

37. In the Category I, it is admitted position between the parties that Manhar Kaur Randhawa, Palkin Kushwaha and Mehtab Singh Dhillon are now not claimants for the NRI quota seats. Learned Senior counsel for the appellants on instructions has submitted that Manhar Kaur Randhawa has got admission at

Amritsar, Palkin Kushwaha has got admission at Shimla and Mehtab Singh Dhillon has got admission in Dayanand Medical College at Ludhiana. In Category II, Rajat Jain, Shivani Gupta and Parneet Kaur Grover (respondents No. 1, 2 and 8) have been admitted in the GMCH, Chandigarh against the NRI seats. The others in category II it is submitted are not claimants for the NRI quota seats and there are objections against Kushpreet Kaur Chhina, Nida Naeem (who in any case it is submitted on instructions has got admission in All India Institute of Medical Sciences) Astha Kaushik, Kshirabdhii Tanaya Mohapatra, Jannat Khanna, Adhith Anand, Siddharth Vats and Akash Dinesh Bisht as also others. It is submitted that Abhiroop Kaur Khera is not a claimant for the NRI quota seat in the GMCH, Chandigarh. This position is not disputed by Sh. Sanjeev Sharma, learned Senior Counsel appearing for the Director Principal, Government Medical College and Hospital, Sector 32, Chandigarh (respondent No. 4). Therefore, all the claimants for NRI quota seats being otherwise eligible for admission against the available seats, the question whether it is mandatory to secure minimum 50% marks in a competitive entrance test for NRI quota seats in Medical/Dental Colleges is left open.

38. The appellants being eligible in accordance with the amended prospectus and in view of the MCI circular dated 16.01.2015 being invalidated would be entitled for admissions against NRI quota seats in the GMCH, Chandigarh, which would, however, not disturb or in any manner affect the admissions granted to Rajat Jain, Shivani Gupta and Parneet Kaur Grover (respondents No. 1, 2 and 8) being in Category II of the NRI quota seats as no one else has made a claim for the seats or approached this Court.

39. At the end, we may place on record our appreciation to all the learned counsel who have appeared in the case and particularly to the learned counsel for the respondents who on the asking and request of the Court, appeared and assisted the Court without demur or seeking adjournments which has facilitated the Court to dispose of the appeal before the cut-off date of 30.09.2015 fixed by the Supreme Court. Without their assistance and cooperation, this would not have been possible.

40. Accordingly, the appeal is allowed and the judgment and order dated 22.09.2015 passed by the learned Single Judge is set aside. However, the setting aside of the said judgment shall not, in any manner, affect the admissions granted to Rajat Jain, Shivani Gupta and Parneet Kaur Grover (respondents No. 1, 2 and 8) being in Category II of the NRI category candidates as no one else has approached this Court. The appellants shall be admitted against NRI quota seats in the Medical College and Hospital, Sector-32, Chandigarh (respondent No. 4). There shall be no order as to costs.