
(2016) 07 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 941 of 2015, MP No. 01 of 2015 and MP No. 02 of 2015

Himshee Mansotra

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Board of Professional Entrance Examinations Rules, 2014 — Rule 6
Jammu and Kashmir Board Professional Entrance Examinations Act, 2002 — Section 23

Citation : (2017) AIR(J&K) 29 : (2016) 4 JKJ 262

Hon'ble Judges : Mr. Tashi Rabstan, J.

Bench : Single Bench

Advocate : Mr. Abhinav Sharma, Advocate, for the Applicant In MP No. 02 of 2016; Ms. Mahvish Shah, Advocate Vice Ms. Anshuja Tak, Advocate, for the Respondent No. 5; Mr. Ashish Singh Kotwal, Advocate, for the Respondent Nos. 2-4; Ms. Veenu Gupta, Advocate, for the A

Final Decision : Dismissed

Judgement

Mr. Tashi Rabstan, J. - Pursuant to Advertisement Notification No. 02-BOPEE of 2015, dated 16.02.2015, Respondent No. 2 invited

applications from the candidates interested in appearing in the Common Entrance Test (GET) 2015 for admission to various professional courses

viz. MBBS/ BBS/ MABS/ MUMS/ Physiotherapy/ Diploma Dental Hygiene/B.E. Petitioner was an outstanding sports person in the sports of

Badminton having participated in various events including national events. She after fulfilling the eligibility criteria being sports personnel pursuant to

the aforesaid. Notification applied for appearing in the Common Entrance Test, 2015 by filling up her online application form under sports

category. On filling up the online application form, a provisional confirmation

page came to be issued in her favour allotting application No. as

3BOP1518510 wherein the category shown to be applied by petitioner is 16, i.e., candidates possessing outstanding proficiency in sports.

Respondent No. 2 thereafter issued provisional electronic Admit Card allotting Roll No. 10904237.

2. It is contended that as per the Advertisement Notification aforesaid, the candidate applying under sports category were required to submit their

sports certificates in the office of the Secretary, J&K Sports Council (hereinafter called as Sports Council) for determining their sports points

which will be afterwards officially forwarded by the J&K Sports Council to the Board of Professional Entrance Examination (hereinafter called as

BOPEE"). It is further contended that this condition as contained in the Advertisement Notice dated 16.02.2015 is totally contrary to the

provisions of law inasmuch as for determining the sports points of a candidate, who has applied under sports category, it is the responsibility and

duty of Respondents 2 to 4. However, Respondents 2 to 4 instead of performing their duties of getting the sports points of the concerned

candidate determined from the Sports Council, have shifted the said obligation upon the concerned candidate.

3. Petitioner appeared in the Common Entrance Test and thereafter Respondents 2 to 4 declared her result and shown her ranking at Serial

Number 1181. She was declared to have obtained 90 marks out of 177 marks, percentage of which is 50.85%. However, it is contended by the

petitioner that no points on account of sports category were awarded to her. In this regard, she approached Respondents 2 to 4 and requested

them to alter her merit position by awarding necessary sports point to her, but the said request of the petitioner was not at all entertained on the

ground that petitioner should have obtained the sports points from the Sports Council as per the impugned condition envisaged in the

Advertisement Notification. Hence, this petition on the grounds taken in it and with the following prayer:-

(a) An appropriate writ, order or direction in the nature of writ of certiorari quashing the condition with regard to furnishing of sports category

certificate by the candidates applying under sports category to the J&K Sports Council, as contained in the; advertisement notification dated

16.02.2015 being ultra virus the provisions of law;

(b) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents 2 to 4 to select the petitioner to

undergo MBBS Course under Sports category-Female candidate in reference to advertisement Notification No. 02-BOPEE of 2015, dated

16.02.2015 (Admission notification for Common Entrance Test 2015), as out of five seats meant for female candidates under sports category only

two seats have been filled and remaining three are vacant by taking into consideration the sports points earned by the petitioner;

(c) An appropriate writ, order or direction in the nature of writ of mandamus commanding the Respondent No. 5 to determine the sports point of

the petitioner and forward the same to the Respondent No. 2 so that the petitioner who has secured 1181 rank in the selection process is selected

for undergoing the professional course;

(d) An appropriate writ, order or direction in the nature of writ of mandamus commanding the Respondents 2 to 4 to hold counselling of the

petitioner for allotment of seat for undergoing medical course under sports category and to allot/allocate the seat to the petitioner for the year

2015-16; and

(e) Any other relief, which this Honâ??ble Court in the facts and circumstances of the case deems fit and proper, may also kindly be granted in

favour of the petitioner.

4. Respondents have filed objections wherein it is contended that petitioner while applying for Common Entrance Test, 2015 has violated the

provisions of Rule 6 of J&K Board of Professional Entrance Examinations Rules, 2014. For facility of reference, Rule 6 of the J&K Board of

Professional Entrance Examinations Rules, 2014 is reproduced as under:-

(6) Competent Authority: Authorities competent for issuing reserved category certificates shall be such as notified by the Government from time to

time.

Provided that in case of Children of Defense Personnel other than core service, a candidate having a certificate that his/her father is working in

Defense Establishment (Military Engineering service or other service of like nature) where salary is paid out from Defense Estimates is not entitled

to the benefit of CDP category. Where this certificate is wrongly accepted and the candidate gets admission on the basis of this certificate, the

admission of such candidate will be cancelled as and when this mistake comes to the knowledge of Board or brought to its notice:

Provided further that the candidates having ""Outstanding Proficiency in Sports"" must submit their certificates to the Secretary, J&K Sports Council

for awarding points which will be then officially forwarded to the Board by the Sports Council. The Board shall not be responsible where a

candidate fails to submit certificates to the Council or Council fails to forward the points of a candidate to the Board. It shall be the sole

responsibility of the candidate to ensure that his/her sports points are forwarded by the Council to the Board.

5. It is contended on behalf of respondent-BOPEE that petitioner has not applied to Respondent No. 5 for awarding of points under sports

category and even her name did not mention in the list recommended by Respondent No. 5 vide communication dated 23.01.2015 to the BOPEE.

It is further-contended that as per Rule 5(6) J&K Board of Professional Entrance Examinations Rules, 2014, no category certificate issued after

the expiry of the last date shall be accepted. In the instant case, last date was 13.03.2015. It is contended that petitioner had neither applied to the

Sports Council for grant of sports weightage within the time for which she was required to apply before the Sports Council nor had annexed the

sports category certificate from the Sports Council with the application form submitted to the BOPEE and apart from that could do so even within

the extended time granted by the BOPEE filed the instant petition seeking consideration under sports category on the plea that she be allowed to

get her sports proficiency certified by the Sports Council after the cutoff date. It is further contended that at this stage the Board is not in a position

to accept any sports points from the Sports Council as that will have cascading effect and whole list has to be redrawn. Similarly situated

candidates of other categories will also have then claim to get their category certificate enlisted which will make selection process endless and the

finalization of the admission will never come to an end. Therefore, the petitioner has no right to seek consideration of her points at this belated

stage. It is further contended that mere applying under sports category on application form does not qualify the petitioner in the said category

unless and until the sports points of the petitioner are received from the Sports Council, which is competent body constituted by the Government

for the said purpose.

6. Heard learned counsel for the parties and perused the record.

7. In a nutshell, the case projected by the petitioner is that the condition contained in the Advertisement Notification No. 02-BOPEE of 2015,

dated 16.02.2015 with regard to furnishing of sports category certificate by the candidates applying under the sports category to the J&K Sports

Council for evaluation of sports points is ultra virus the provisions of law and that petitioner who had applied to Respondents 2 to 4-BOPEE under

sports category should have been considered under the sports category (Female quota) without insisting upon her to have her sports points

evaluated from J&K Sports Council as was stipulated in the Advertisement Notice. The petitioner, therefore, contends that the aforesaid condition

in the Advertisement Notice is per se illegal and arbitrary and therefore, respondent-Board is under legal obligation to consider her candidature for

five seats meant for Female candidates under the sports category, more so, when three out of 5 seats in the aforesaid category have remained

vacant due to the non-availability of the eligible candidates.

8. Per contra, learned counsel for the respondents-Board has contended that stipulation contained in the Advertisement Notice impugned in the

writ petition is not at all illegal, violative and in consonance with the Rule 6 of the J&K Board of Professional Entrance Examinations Rules, 2014.

Learned counsel has pointed that with a view to regulate the admission to various professional courses, State Legislature has enacted Jammu and

Kashmir Board of Professional Entrance Examinations Act, 2002 in exercise of power conferred under Jammu and Kashmir by Section 23 of the

aforesaid Act, 2002 as framed by J &K Board of Professional Entrance Examinations Rules, 2014. Proviso-II appended to Rule 6 of the Rules,:

2014 makes the position abundantly clear and substantiates the points that impugned condition of Advertisement Notification is in consonance with

law and not in any manner in derogation of law.

9. I have gone through the Jammu and Kashmir Board of Professional Entrance Examinations Rules, 2014 reproduced herein above. Proviso-II of

which would reveal that a candidate applying under sports category and claiming

outstanding proficiency in sports is required to submit his/her certificate to the Secretary, J&K Sports Council for awarding points which will be then officially forwarded to the Board by the J&K Sports Council. It is further clearly provided that the Board shall not be responsible where a candidate fails to submit certificates to the J&K Sports Council or Sports Council fails to forward the points of a candidate to the Board and it would be sole responsibility of the candidate to ensure that his/her sports points are forwarded by the J&K Sports Council to the Board. Moreover, it is not the case of the petitioner even that she had applied for evaluation of her sports points to the J&K Sports Council in compliance with Rule 6 for submitting her certificate within the stipulated period nor is it her case that J&K Sports Council had in any manner failed in its duty to forward her sports points to the BOPEE. It is in this background that the petitioner has not claimed any such relief against the respondent-J&K Sports Council. Otherwise also, in view of the fact that petitioner has not challenged otherwise the validity of the Rule 6 of the J&K Board of Professional Entrance Examination Rules, 2014 which are statutory in nature and have been framed by the Government in exercise of its power conferred upon it by the Section 23 of the J&K Board Professional Entrance Examinations Act, 2002. The challenge to the impugned condition of the Notification, which only gives effect to the aforesaid statutory Rules, cannot be sustained.

10. Viewed from any angle, petitioner has failed to make out a case for grant of relief prayed in the writ petition. That being the position, writ petition is found without any merit. Accordingly, the same is dismissed along with connected MP(s).

MP No. 02/2015.

This is an application seeking impleadment of applicant-Neha Choudhary daughter of Sh. Gopal Singh resident of village Bhou P.O. Khour

Deonia, Tehsil R.S.Pura, District Jammu as party respondent in the above titled writ petition.

In view of order passed in the main writ petition, no order is required to be passed in this application. Accordingly, the same shall stand disposed of.