
(2016) 08 P&H CK 0368
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14198 of 2016

Ishann Nijjar

APPELLANT

Vs

PEC University of Technology

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Citation : (2016) 3 RSJ 418 : (2016) 4 SCT 404

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Ms. Ritu Pathak, Advocate, for the Petitioners; Arun K. Bakshi, Advocate, for the Respondent No. 2; Sudhir Mittal, Advocate, for the Respondent No. 3; Raman B. Garg and RVS Chugh, Advocates, for the Respondent No. 4; R.K. Trikha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The petitioners seek quashing of the merit list dated 16.07.2016 (Annexure P-3) and 18.07.2016 (Annexure P-4) whereby, private respondents no. 3 to 7 belonging to the sport of "skating" have been included in the merit list for admission in B.E. and Bachelor of Architecture course for the academic session of 2016.

2. The sole contention is that the sport of "skating" is not included in the list of sports to be considered for admission against the reserved category for sports persons as mentioned in the information brochure/prospectus (Annexure P-1).

3. The petitioners' grievance is that they were seeking admission with respondent no. 1-institute against the seats reserved for sports persons and further had all the essential requirements. The petitioners were holding gradation B certificates in the game of base ball and softball and out of the 13 seats reserved for the sports persons, two seats were reserved for the discipline of computer science and engineering course. Clause 5.7.2.4 of the information brochure provided the benefit of reservation to the sports persons for which 28

disciplines were there and the sport of skating was not in the said list. In the list published on 16.07.2016 (Annexure P-3) only the roll numbers had been published and the petitioners figured at Sr. Nos. 7 and 5 respectively. Thereafter, on 18.07.2016 (Annexure P-4), the persons mentioned at rank 1 to 4 were included on the basis of achievements in the discipline of skating, which was not part of the list of sports given in the information brochure. Resultantly, the fresh merit list was put up giving the complete list of the details of the candidates. The private respondents were accordingly given the benefit and the petitioners have been caused loss as they would have been ranked higher than in the current positions which would affect their admission to the preferred branches.

4. Counsel for the petitioner has accordingly, on the basis of the above pleadings, relied upon the Full Bench judgment of this Court in *Amardeep Singh v. State of Punjab*, 1993 (4) SCT 328 and *Raj Singh v. Maharishi Dayanand University*, 1994 (2) SCT 766 to submit that the change in criteria of prospectus was not permissible.

5. Respondent no. 2-Joint Admission Committee which is a body approved by the Chandigarh Administration for conducting admissions to the engineering course for the session 2016-17 for the 6 instituters in its reply took the plea that the Technical Education Department of Chandigarh, vide letter dated 09.06.2015 (Annexure R-2/1) had reviewed the sports gradation policy and notified some changes. The game of skating/roller sports had been introduced at item no. 23 for the purpose of gradation certificates/cash awards and scholarship schemes and the policy was to come in effect from the next academic session 2016-17. The copy of the letter had been received in the Chandigarh College of Engineering and Technology, Sector 26, Chandigarh and had been made available to respondent no. 1-university on 14.07.2016 in a Joint Admission Committee meeting. The new sports gradation policy was thereafter uploaded on the PEC website on 15.07.2016. The website of the Chandigarh Administration had, however, been updated earlier on 01.06.2016 (Annexure R-2/2). The information could not be incorporated in the brochure which stood finalised in May, 2016. However, it had been mentioned therein that the latest guidelines of Chandigarh Administration would be followed in preparing the merit list since the website of the Chandigarh Administration stood uploaded on 01.06.2016.

6. The said game was accordingly to be taken into consideration for preparing the merit list at the time of applying for admission. Resultantly, it is pointed out that respondents no. 3 and 4 were entitled for the benefit of the said sport of skating whereas respondent no. 5 had not taken admission. Respondents no. 6 and 7 had got admission in the open category on their own merit without affecting the petitioners.

7. Respondent no. 3, in its reply, took the plea that the sports gradation certificate was issued on 08.07.2016 in his favour by the Chandigarh Administration in the sport of skating on the basis of letter dated 09.06.2015. On account of the revised policy, the said respondents had applied and the game of

skating erroneously has not been mentioned in the sports discipline. Resultantly, it was pleaded that it was clerical error on account of respondent no. 1 which would not make the respondent ineligible to take admission under the sports quota.

8. Similar reply was filed by respondent no. 4 that 29 sports disciplines were now to be considered for gradation certificates for the academic session 2016-17 as per letter dated 09.06.2015. The administration had also notified the same on 01.06.2016 and the fresh guidelines in the record were to be notified on the website. Resultantly, it is submitted that the answering respondents had been issued necessary gradation certificates and were entitled for consideration.

Counsel for the respondents have thus justified the merit list to hold out that the petitioners are also being given the benefit of admission in the reserved category against their gradation certificates. However, only their merit had been pushed down on account of the inclusion of respondents no. 3 and 4 on the strength of the discipline of skating being included in the recognised list of sports disciplines, therefore, in view of the clause in the prospectus itself, the game could have been included as per the decision dated 09.06.2015.

9. After hearing counsel for the parties, this Court is of the opinion that the contention raised by the petitioners is not liable to be accepted. The admission for sportsman was to be made under clause 5.7.2.4. Clause (ii) would go on to show that performance in various sports were to be considered for purposes of admission and 28 sports were notified accordingly. However, clause (v) further provided that any fresh guidelines in this regard issued by the Chandigarh Administration will be notified on the website of respondent no. 1-institute. The relevant portion of the information brochure reads as under:-

"5.7.2.4 Sportspersons

Benefit of reservation under this category shall be available only to the category of students, who pass their qualifying examination, as regular students, from Schools/Colleges, recognised by the Chandigarh Administration and situated in the Union Territory of Chandigarh, and who have studied in Chandigarh Schools/Colleges for at least two years before applying for gradation certificate, subject to the condition that such students must represent Chandigarh State/Schools etc. in the National/other recognised tournaments.

(i) The inter-se merit of the candidates seeking admission against seats in the reserved category of sports shall be determined only on the basis of their merit in sports as per grading criteria mentioned in the succeeding paragraphs, provided they have qualified in the JEE (Main)-2016.

(ii) Performance in the following sports disciplines only, shall be considered for the purpose of admission against this category, provided that the association/federation holding the tournaments should be affiliated to/recognised by the National Federation of the concerned game:

1.

Aquatics

2.

Archery

3.

Athletics

4.

Badminton

5.

Baseball

6.

Basketball

7.

Boxing (Men)

8.

Canoeing

9.

Cycling

10.

Equestrian

11.

Fencing

12.

Football

13.

Gymnastics

14.

Handball

15.

Hockey

16.

Judo

17.

Rowing

18.

Sailing

19.

Shooting

20.

Softball

21.

Table Tennis

22.

Taekwondo

23.

Tennis

24.

Triathlon

25.

Volleyball

26.

Weightlifting

27.

Wrestling (Men)

28.

Cricket

(iii) To avail the benefit of reservation under this category, a candidate must obtain gradation certificate from Director of Sports, Union Territory, Chandigarh, and attach the same with his/her application. No application shall be entertained in this category in the absence of gradation certificate. PROVISIONAL GRADATION CERTIFICATES ARE NOT ACCEPTABLE. NO GRDATION CERTIFICATE

SHALL BE ACCEPTED AFTER THE LAST DATE OF RECEIPT OF THE APPLICATION.

(iv) A candidate shall be considered for admission against seats belonging to this category, only if

(a) his/her age falls within the age group which is eligible for participation in Inter-College/Inter-University tournaments.

(b) his/her achievement in sports relates to his/her activity in any of the three years preceding the year of admission (for admission in the year (2016-2017, the achievements shall not be prior to 1st April, 2013).

(c) Gradation Certificate will not be meant for employment purposes.

(v) The sports gradation certificates shall be in the following descending order of merit.

*Any fresh guidelines in this regard issued by Chandigarh Administration will be notified on website www.pec.ac.in."

10. It is not disputed that in pursuance of a policy decision taken a year back, the game of skating was also included in the discipline by the Chandigarh Administration on 09.06.2015 (Annexure R-2/1) whereby, the game of skating/roller sports was included. Various games like Diving Synchronized Swimming, Water Polo, Slalom, Sprint, Equestrian, (Dressage, Eventing, Jumping), Modern Pentathlon Rugby, Sailing, Beach Volleyball were dropped by the Special Secretary, Technical Education while implementing the sports gradation policy from the next academic session 2016-17. It is also a matter of fact that on 01.06.2016, Chandigarh Administration also notified the games which have been approved for inclusion in place of the existing sports gradation policy, which was to be implemented from the academic session 2016-17. It is resultantly, in view of this, the private respondents no. 4 and 5 are being given the benefit of consideration under the sport of skating. Clause (v) of the prospectus provides that the fresh guidelines which are to be issued by the Chandigarh Administration would be notified on the website of respondent no. 1- university. It is in pursuance of these guidelines that the said respondents had been given the grading certificates. The contention of counsel for the petitioners, in such circumstances that the terms of the prospectus were being violated is not correct. Merely because the sport had not been included at that point of time though a decision already stood taken a year earlier, the argument raised by counsel for the petitioner cannot be accepted that there is a violation of the terms and conditions of the prospectus. Gradation certificates (Annexure R-4/1) have thus been issued by the Chandigarh Administration, Director of Sports on 13.06.2016 and 08.07.2016 in favour of the private respondents on the strength of the sport being included on 01.06.2016 by the Administration.

11. Once the prospectus itself provided that the fresh guidelines would be notified, the addition as such which was made a year earlier by the competent authority being the Secretary of the Technical Education but was not incorporated

in the information brochure/prospectus which was published in May, 2016 cannot take away the right of the respondents no. 3 and 4 for consideration in view of the decision of the Chandigarh Administration. The reliance of counsel for the petitioners on the judgment of Krishna Bansal v. State of Punjab and others, 2015 (4) SCT 547 in such circumstances is without any basis. In the said case, the issue was that the government, by public notice, revised the admission criteria by way of public notice for the vacant NRI seats for MBBS/BDS courses. On account of NRI students failing to qualify by not obtaining 50% marks in PMET, 2015, the State opted to fill the vacant seats on the basis of the 10+2 examination against the terms of Clause 23(vi) of the prospectus. In such circumstances, it was held that the Government is bound by its prospectus and the instructions and the public notice could not be issued in violation of the terms of the prospectus at the last moment making ineligible candidates eligible.

12. In the present case, in pursuance of the condition in the prospectus itself, respondent no. 2 was only complying with the directions dated 09.06.2015 and taking necessary action.

13. The Apex Court in Rajiv Kapoor v. State of Haryana, 2000 (9) SCC 115 while setting aside the order of the Division Bench of this Court held that though the prospectus has the force of law and the Government has no right to issue any contrary instructions but if the orders have been forwarded to the university to make necessary entries, the appellants could not be faulted. The litigation was on account of the publication of the prospectus by the university and not carrying out the orders of the Government passed from time to time. Resultantly, the appeals were allowed by holding that the compendium of the entire scheme be issued at the beginning of every academic year to avoid confusion in the matter of selections every year. The relevant para reads thus:-

"The mess that has occurred leading to the present litigation seem to be more on account of the inept drawing and publication of the Prospectus by the University and not properly carrying out the binding orders of the Government and of too many orders passed from time to time, being allowed to stand piecemeal independently. The Government would do well in future to publish at the beginning of every academic year, even before inviting applications a compendium of the entire scheme and basis for selection carrying out amendments up-to-date and the Prospectus also specifically adopting them as part of the Prospectus, to avoid confusion in the matter of selections, every year."

14. As noticed, the decision had been taken a year earlier for the present academic session but unfortunately the amendment had not been included in the prospectus. The respondent-administration and the Admission Committee have thus only acted upon the same and in view of clause (v), were entitled to make necessary notifications which have been duly done on the basis of which, respondents no. 3 and 4 have got admission.

15. In such circumstances, no fault can be found in the said action and the

present writ petition is dismissed.