
(2000) 09 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16765 of 1999

Kamal Bhatia and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2001 P&H 117 : (2001) 1 ILR (P&H) 414

Hon'ble Judges : N.K. Sud, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : Puneet Jindal, for the Appellant; S.K. Sharma, DAG (for No. 1), R.K. Garg, (for Nos. 4, 8 to 12) and Anupam Gupta, (for Nos. 2 and 5), for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—This order will dispose of two writ petitions Nos. 6914 of 2000 and 16765 of 1999 involving common questions of law and facts. The petitioners in these writ petitions are students of various Engineering Colleges of Punjab who had been admitted to second year/3rd semester of Bachelor of Engg./Technology course under the Lateral Entry Engineering Test 1999 (for short "LEET-99") conducted by the Punjab Technical University, Jalandhar (for short "the University"), on 18-7-1999. They are aggrieved by the notice issued by the University in the Tribune dated 12-8-1999 notifying that as per the fee structure as revised by the Punjab Government they were required to pay the same fee and other charges as was being charged from the candidates seeking admission to 1st year B.E./B.Tech. 1999-2000.

2. Before adverting to the points at issue the relevant facts may first be noticed. The Punjab Government under the directions of Ministry of Human Resource Development and All India Council for Technical Education had framed a scheme in 1994 whereby Diploma holders were to be granted admission directly into the second year or 3rd semester of Bachelor of Engineering/Technology course. For

this purpose a separate entrance test was introduced which was known as LEET i.e. Lateral Entry Engineering Test. It is an admitted fact that the fee structure of students admitted directly to the second year of the degree course through LEET was maintained at par with other second year students who had been admitted to the degree course in the 1st year in the preceding year. This practice had been regularly followed up to 1998. Even in the Information-cum-Admission Brochure issued for LEET-99 by the University, this parity had been maintained. Clause 4.5 of Part B of this Brochure which is relevant for this purpose is reproduced for ready reference:--

"4.5 Each candidate selected for admission, after counselling, will be required to deposit the original certificates and Rupees 5000/- failing which the admission shall stand cancelled. After deducting the processing fee, the balance amount shall be remitted to the Institution to which the candidate is admitted finally.

The candidate admitted to a particular institute shall deposit full fee to the respective institution not later than three days after the start of session, failing which the admission shall automatically stand cancelled.

The fee structure which inapplicable to the second year students of B.Tech. (1998) Batch) programme will be applicable to the students who are admitted to Second Year/ Third Semester on the basis of LEET-99."

The last date for submission of forms for entrance test as per this Brochure was 25-6-1999 and the entrance test was conducted on 18-7-1999. The result was to be declared latest by 2-8-1999. The last date for submission of application form for admission by the selected candidates was 12-8-1999. The counselling dates were 17-8-1999 to 20-8-1999. It was on 12-8-1999, the last date for submission of application forms for admission, that the Impugned notice about enhancement in fee appeared in the English daily newspaper The Tribune. It is in the background of these facts that the petitioners have challenged the action of respondents in notifying the enhancement in the fee structure for the candidate admitted through LEET-99.

3. Sh. Puneet Jindal, Advocate, appearing on behalf of the petitioners contends that there was no justification whatsoever in issuing the impugned notice on 12-8-1999, According to him, the decision of the Punjab Government relied upon in this notice appears to be the one contained in letter dated 15-3-1999 addressed to the Director, Technical Education and Training, Punjab, Chandigarh (Annexure P-1). He argued that as per this letter, the revised tuition fee and other fee were to be charged from the students admitted to the first year of the degree course in the academic session 1999-2000 and not to the students admitted directly into the second year under the LEET-99. He pointed out that the University had earlier issued an Information-cum-Admission Brochure for the Common Entrance Test 1999 (for short "CET-99") held on 30-5-1999 for admission to the First year of Bachelor of Engineering/Technology/Architecture courses and the relevant letters of the State Government dated 15-3-1999 had

duly been annexed as Annexures-7 and 8 in the Brochure Itself. In clause 4.5 of Part B of this Brochure, it had been mentioned that the fee structure was to be governed by these two Annexures. To elaborate his argument he referred to Rule 4.5 of Part B of this Brochure which reads as under :

"4.5. Each candidate selected for admission, after counselling, will be required to deposit the original certificates and Rupees 5000/- failing which the admission shall stand cancelled. After deducting the processing fee, the balance amount shall be remitted to the institution to which the candidate is admitted finally for refund to the candidate.

The candidate admitted to a particular institute shall deposit full fee to the respective institution not later than three days after the start of session, failing which the admission shall automatically stand cancelled.

The fee structure has been mentioned in Annexures-VII and VIII."

The Information-cum-Admission Brochure for LEET-99 had admittedly been issued subsequent to the Brochure for CET-99 and, therefore, it cannot be said that while specifying the fee structure for LEET-99 candidates the Punjab Technical University had overlooked the letters of the State Government. According to the learned counsel since the candidates admitted through LEET-99 were to be governed by the fee structure applicable to the second year students of B.Tech. (1998 Batch), the University had not found it necessary to refer to these letters or annexed them in the Admission Brochure. It was contended that the action of the University in issuing the impugned notice on 12-8-1999 was not on account of any subsequent instructions received from the State Government but was based on a change of its perception about the interpretation of the State Government's letter dated 15-3-1999. It was submitted that the candidates admitted through LEET-99 directly to the Second year of the degree course was a category apart and had been consistently treated at par with the other students of the same class. This benefit had specifically been conveyed in the Information-cum-Admission Brochure as per the relevant provision already reproduced above. It is submitted that there is no instruction from the Government for withdrawal of this concession nor can the letter of the State Government dated 15-3-1999 be read to lead to any such interpretation. It was then contended that even if it were to be assumed that the letter dated 15-3-1999 did warrant charging of fee from the petitioners at the revised rates, yet the University was not competent to issue the impugned notice as it resulted in amendment of the Information-cum-Admission Brochure after the test had already been conducted and the result declared. It was submitted that this was not permissible. Reliance in this behalf was placed on the judgment of a Full Bench of this Court in *Amardeep Singh Sahota v. State of Punjab* (1993) 2 PLR 212, wherein it had been held that the prospectus issued for admission had the force of law and the admission had to be governed by the instructions laid down in the prospectus after the students had appeared in the examination on the basis of such prospectus. It was further held that it was not open to the State Government thereafter to issue contrary

instructions. Similar view was taken by another Bench of this Court in *Varinder Singh and Others Vs. State of Punjab and Others*, . Thus, according to the learned counsel for the petitioners the impugned notice was liable to be quashed on this ground as well. Lastly, it was contended that the action of the respondents in charging a higher fee structure from the students admitted through LEET-99 was totally discriminatory and unfair and was liable to be quashed on this score also. It was pointed out that as a result of this notice a situation had arisen whereby students in the same class getting same services are being charged different fee. As an illustration it was pointed out that a student admitted through LEET-99 had to pay Rs. 68950/- as tuition fee while another student of the same class had been charged a sum of Rs. 36882/- as tuition fee simply because he had joined the first year degree course in the year 1998.

4. Shri Anupam Gupta, appearing on behalf of the University on the other hand supported the action of the University in issuing the impugned notice dated 12-8-1999. According to him the University while issuing the Information-cum-Admission Brochure for LEET-99 had overlooked the Government Instructions contained in its letter dated 15-3-1999 and as such had wrongly mentioned in the relevant clause that the fee from the candidates admitted through LEET-99 was to be governed by the fee structure applicable to the second year students of B.Tech. (1998 Batch) programme. According to him, the University was well within its rights to amend the prospectus vide the impugned notice dated 12-8-1999 which was the last date for submission of application form for admission. Thus, according to him, it was merely a correction of mistake committed by the University earlier in not implementing the instructions of the Government which were already in existence when the prospectus had been issued. He further stated that even otherwise as per Rule 3.9 of Part B of the same Brochure it had clearly been provided as under :--

"3.9 The student shall have to pay the fees and other charges, both for free and paid seats, as per the rates of fees and charges as decided by the Government from time to time."

The argument of the learned counsel for the respondent is that even without any amendment or notice by the University the students admitted under the terms of this Brochure itself were liable to pay the fee as decided by the Government of Punjab from time to time, and, therefore, the petitioners were liable to pay the fee as notified in the State Government's letter dated 15-3-1999. Shri Gupta also contended that the University was competent to amend the Admission Brochure even after the test had been conducted. According to him, the law laid down by this Court in *Amardeep Singh Sahota's case*. (1993 (2) PLR 212) (FB) (supra) and *Varinder Singh and Others Vs. State of Punjab and Others*, was no longer good law in view of the recent judgment of the Supreme Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, . He also dispelled the argument on behalf of the petitioners that the fee structure was discriminatory in

any manner. According to him the revised fee was being uniformly charged from all the students admitted during the academic session 1999-2000 and it was of no consequence that some students in the same class as that of (he candidates admitted through LEET-99 were paying lesser amount as fee.

5. We have heard the counsel for the parties and have perused the records. We have also gone through the Information-cum-Admission Brochures issued by the University for CET-99 held on 30-5-1999 and for LEET-99 held on 18-7-1999. The CET-99 was conducted earlier in point of time and the University had duly reproduced the letters of the State Government dated 15-3-1999 in the Brochure. It had further been mentioned in the Brochure itself that the fee structure shall be governed by these letters. It is evident that the new structure was to be made applicable to students admitted through the academic year 1999-2000. It is further clear that as per the notes given below this letter it had also been specifically stated that the students admitted prior to 1999-2000 were to be charged fee at the old rates. As against this, the same University had issued the Information-cum-Admission Brochure for LEET-99 subsequently in which it had clearly been mentioned that the fee structure of the second year students of B.Tech. (1998 Batch) programme was applicable to the candidates admitted through LEET-99. This was a concession given to the Diploma holders since the Scheme had been introduced in the year 1994. The rationale behind this concession obviously was not to discriminate between two sections of students of the same class who were similarly situated. Under the Lateral Entry Scheme the candidates were admitted directly to the second year/3rd semester of the degree course and, therefore, were treated at par with the other students in the same class who had joined the basic course as regular candidates in the first year or first semester in the preceding year. Thus, according to us, the omission to refer to the letters of the Punjab Government dated 15-3-1999 providing the fee structure for the students admitted during 1999-2000 was obviously not applicable to the students admitted through LEET-99 and as such these were not referred to in the Brochure issued subsequently for LEET-99. This omission cannot be said to be a mistake or an oversight as the University was quite alive to this situation when it had issued the Brochure for CET-99. It is not the case of the respondents that any subsequent decision had been taken by the State Government to withdraw the concession given to the students admitted through LEET-99 about the fee structure which had been continuously given since its inception in 1994. The impugned notice in the newspaper appears to have been prompted on account of reconsideration or review of the interpretation of the State Government's letter dated 15-3-1999 by the University authorities and not on account of any subsequent decision by the State Government withdrawing the fee concession to the candidates admitted through LEET-99.

6. We are also in agreement with the submissions of the counsel for the petitioners that the provision for keeping the fee structure of LEET-99 students at par with that applicable to the students of second year of the degree course (1998 Batch) could not be modified after the entrance examination under the

said Brochure had duly been conducted and the result thereof declared. This point is very well settled as per the judgment of this Court relied upon by the counsel for the petitioners. The judgment of the Apex Court in Rajiv Kapoor's case (AIR 2000 SC 1476) (supra) relied upon by the learned counsel for the respondent-University does not lay down that any provision of the prospectus could be amended after the examination had already been conducted. In the case before Supreme Court the question was about the selection of candidates for admission to post-graduate degree and diploma courses in Medicine from amongst the candidates who had qualified in the entrance test. In the prospectus governing the said test it had been provided that the candidates who obtained certain percentage of marks became eligible for admission. As per Chapter V of the prospectus, the selection of eligible candidates had to be made at two and a half times the number of seats available for the purpose of interview before the Committee constituted for the purpose of admission. The Selection Committee had conducted an interview and from the eligible candidates, who had qualified in the written test, made the final selection. The interview was conducted on the basis of the criteria specified by the Government from time to time. The selection was made by taking into account the academic career, experience, rural service, annual confidential reports and marks obtained at the interview. Some of the eligible candidates who were high on the list prepared as per the written test, had not been granted admission after the interview. They had filed the writ petition before this Court claiming that the admission should be made only on the basis of norms and criteria proclaimed in the prospectus issued by the Medical College in question in which there was no provision for the interview and, therefore, admission had to be made only on the basis of the marks obtained in the entrance test held for this purpose. On the other hand, the respondents therein had contended that the marks obtained in the entrance examination only entitled them to be called for interview and the final selection had to be made by the Selection Committee constituted for this purpose on the basis of criteria stipulated by the Government from time to time as was being consistently done in the past. It may be mentioned that the Interview Committee had followed the criteria laid down in the Government Order dated 21-5-1997 which date fell after the date of entrance examination. However, there were earlier orders also to the same effect issued by the Government on 20-3-1996 and 21-2-1997. The High Court had agreed with the petitioners that since no criteria had been laid down for the interview in the prospectus, the Selection Committee could not look into the Government Orders and evaluate the candidates as per the criteria laid down in the order dated 21-5-1997. In other words the High Court was of the view that, for the purpose of granting admission except the prospectus in question nothing else could be looked into. The High Court had further held that the Government Orders had the effect of varying the criteria laid in the prospectus in the matter of selection to seats which was not permissible. The Apex Court did not agree with the High Court. It was observed that the Chapter V of the prospectus only envisaged the preparation of merit list at two and half times the number of seats available in each category on the basis of written examination

and had left the matter for further assessment of merit open without specifying any further marks. This, according to the Supreme Court, had apparently been done on account of applicability of the Government Orders which took care of the weight age to be given to such candidates in respect of the assessment of their merit before actual selection for admission. The Supreme Court had also mentioned that even if the subsequent order of the Government dated 21-5-1997 was to be eschewed from consideration, the earlier orders dated 20-3-1996 and 21-2-1997 to the same effect were still required to be complied with for assessment in the interview. Thus, the Supreme Court held that in addition to the prospectus the orders of the Government also governed the admission. It is, therefore, clear that controversy before the Supreme Court was not whether the criteria mentioned in the prospectus could be changed or not but was merely whether the orders of the Government could also be taken into account on an issue which had been left open in the prospectus. The Apex Court had merely disagreed with the findings of the High Court that the admissions in question had to be made in terms of the stipulations contained in the prospectus issued by the University and in assuming that the Government had no authority to issue directions laying down any criteria other than the one contained in the prospectus. The Supreme Court had no occasion to deal with the issue whether the criteria mentioned in the prospectus could be changed subsequent to the holding of the test or not. The relevant observations of the Supreme Court in paras 11, 12 and 13 are being reproduced for the sake of convenience.

"11. So far as the cases before us are concerned, the High Court, not only held that the Government order dated 21-5-97 issued after the declaration of the results of the entrance examination held pursuant to the prospectus issued for 1997, could not be followed but went a step further to hold that except the prospectus in question nothing else could be looked into and that the Government orders had the effect of varying the criteria laid in the prospectus in the matter of selections to the seats reserved for HCMS candidates. We are unable to appreciate this reasoning. The Government Orders dated 21 -5-97 did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the orders dated 21-5-97 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview, were still required to be complied with and they could not have been given a complete go-by, as has been done by the High Court.

12. Both the orders of the Government dated 20-3-96 and 21 -2-97 in unmistakable terms stipulated that after issue of no objection certificate against reserved seats to the HCMS Medical Officers, they had to appear not only in the common Entrance Test and obtain at least 20% of marks or above to become eligible for consideration but the merit of the candidates had to be determined by

the Selection Committee constituted for the purpose, as per the criteria specified in Annexure "A", thereto after interview. Chapter V of the prospectus, apart from envisaging the preparation of a merit list, at two and a half times the number of seats available in each category on the basis of written examination, contemplates also the award of marks and determination of merit in respect of open seats and so far as candidates of HCMS reserved seats are concerned after specifying the marks stipulated for the written examination, leaves the matter for further assessment of merit without specifying any further marks, apparently on account of the applicability of the Government Orders notified above, which takes care of the weightage to be given to such candidates in respect of the assessment of their merit before actual selection for admission against the reserved category of seats earmarked for HCMS candidates.

13. The fact that the list to be prepared on the basis of marks in written test had to be two and a half times the number of seats available in each category also is an indicator that it was not by itself, the final list of selection for admission to professional courses in a college. Even if there had been any default on the part of the University in properly specifying this aspect despite communication of the Government orders every time to the University with a direction to incorporate them in the Prospectus/Syllabus, the efficacy and binding force of the Government Orders and the necessity to apply the criteria laid down therein to finally determine the merit of the candidates to be selected for admission against the seats reserved for HCMS candidates in terms of the criteria laid down in those orders cannot be overlooked or given up once for all. The Prospectus as well as the orders of the Government in our view have to be construed in such a manner that the inter se merits of the service candidates are properly assessed on the basis of their credentials and performance in service and not merely of theoretical knowledge of the subject as in the case of non-service candidates belonging to the other categories. The construction placed by the High Court, if accepted may result in discrimination on account of applying different criteria of total marks for open candidates and in-service candidates without noticing the distinguishing features relevant for the purpose of assessment of merit in the case of HCMS candidates. We find no reason or justification to allow any deviation from the method of assessment uniformly followed in all the previous years for such selection. For all the reasons stated above, we have no hesitation in holding that the High Court committed a serious error in this regard which vitiates its Judgment and the same is accordingly set aside. We hold that the merits of the HCMS candidates are required to be adjudged in terms of the criteria contained in the Government Orders notified above and the selections can be made for admission against the reserved seats, as per the determination of merit by the Selection Committee constituted for the purpose."

7. In the case in hand the specific concession given in the prospectus to the candidates admitted through LEET-99 is sought to be withdrawn after the entrance test has been already conducted and result thereof declared. This according to us is not permissible. We may also mention that Rule 3.9 of Part-B

of the Admission Brochure relied upon by the learned counsel for the respondents does not advance their case in any manner. This rule merely provides that the students shall have to pay the fee and other charges as per the rates and fee as decided by the Government of Punjab from time to time. On the other hand, the concession about fee structure of the LEET-99 students is provided in Rule 4.5 of the same Chapter according to which they are to be charged the same fee as applicable to the second year students of the degree course. Both these provisions can be read harmoniously. If and when the Government decides to revise the fee structure of the 1998 Batch students, the fee structure of the students admitted through LEET-99 shall also automatically stand revised. In our opinion there is no ambiguity in or conflict between Rules 3.9 and 4.5 of Part-B of the Brochure. It may be kept in view that firstly no revision in fee has been made by the State Government after the issue of the Admission Brochure for LEET-99 anti secondly even as per the letter dated 15-3-1999 the fee structure of the students admitted in the 1998 Batch has not been revised. Thus, the impugned notice dated 12-8-1999 issued by the University cannot be sustained.

8. We are also in agreement with the third limb of the argument advanced on behalf of the petitioners that even if the revision of fee structure of LEET-99 students as per the impugned notice was permissible, the same would be invalid on the ground of discrimination. It has duly been demonstrated that if the impugned notice was allowed to stand then the students such as the petitioners will be required to pay almost double the tuition fee than the other students of the same class availing the same services from the same institution. Such a situation cannot be allowed to prevail. The view that we are taking is based on the principle of harmonious construction. It not only conforms to the principle of equality but also avoids any deviation from the practice uniformly followed since the very Inception of the Scheme in 1994.

9. In the light of above observations, the impugned notice dated 12-8-1999 Annex-ure P-2 has to be quashed. Accordingly, this writ petition is allowed quashing Annexure P-2 dated 12-8-1999. We also direct that fee structure of the petitioners and other students admitted through LEET-99 will have to be at par with the fee structure which is applicable to the second year students of B.Tech. (1998-Batch) programme as per the provision in Rule 4.5 of Part-B of the Information-cum-Admission Brochure of LEET-99 issued by the Punjab Technical University. In case any excess fee has been charged from such students earlier, the same shall be adjusted in the fees to be charged for subsequent years. However, in the circumstances of the case, there shall be no order as to costs.