
(1995) 07 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10233 of 1995

Mandeep Kaur Sahota

APPELLANT

Vs

The Union Territory of Chandigarh and Another

RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 111 PLR 456

Hon'ble Judges : V.K. Bali, J;S.P. Kurdukar, J

Bench : Division Bench

Advocate : J.S. Khehar and P.P.S. Sahota, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Mandeep Kaur Sahota, petitioner herein, while claiming herself to be a distinguished sports-woman, takes strong exception for making no reservation for distinguished sports-person in the M.B.B.S. course as also for providing minimum 50% of marks in the Common Entrance Test as a condition precedent for seeking admission in the MBBS as reflected in the prospectus issued by the Punjab University, Chandigarh.

2. Even though the challenge to the prospectus issued by the Punjab University for non-reservation of any seat in the sports category and providing eligibility criteria of minimum 50% marks is based upon various notifications and the provisions of the Constitution of India, yet it would be useful to notice bare minimum facts constraining the petitioners to approach this Court through present petition filed by her under Articles 226/227 of the Constitution of India.

3. Petitioner qualified her matriculation examination from Guru Nanak Public School, Sector 35, Chandigarh, in 1993. She thereafter sought admission in 10 +1 course having chosen the subjects of Physics, Chemistry and Biology with ultimate object of seeking admission to the professional MBBS Course. She qualified 10+2 examination from M.C.M. D.A.V. College, Chandigarh, which is

stated to be affiliated to the Central Board of Secondary Education, in 1995 securing 74% marks. It is pleaded that in the subjects of Physics, Chemistry, Biology and English, she obtained 78.5% marks. The Panjab University, Chandigarh issued prospectus including application form for holding a Common Entrance Test 1995 (for short CET) for admission to first year MBBS Course to be conducted at various institutions including the Government Medical College, Chandigarh. The prospectus in Part "A" laid down eligibility conditions for admission to 50 seats for the said course. The prospectus also contained notification dated April 4, 1995 issued by the Union Territory, Chandigarh, indicating the eligibility criteria for admission to the MBBS Course conducted by the Government Medical College, Chandigarh. It is the case of the petitioner that the said notification indicates that to be eligible a candidate should be above 17 years as on December 31, 1995. The candidates has also to qualify + 2 examination from a school recognised by the Chandigarh Administration and situated in the U.T. Chandigarh by obtaining atleast 50% marks in the subjects of Physics, Chemistry, Biology and English at the +2 level. Inasmuch as the petitioner fulfilled all the qualifications, she applied for taking CET to be conducted by the Panjab University, Chandigarh. Her candidature was accepted and she was allowed to take the CET. She obtained 117.25 marks out of 330 and, thus, was placed at merit position No. 952. The Director Principal of the Government Medical College, Chandigarh also issued a prospectus for admission to MBBS Course for the academic session 1995. The same indicates the manner in which the admissions to the said institutions were to be made. Petitioner pleads that the prospectus issued by respondent No. 2 i.e. the Educational Institution reveals that the candidates with 50% marks in the CET were eligible to seek admission in MBBS Course conducted by the respondent college as also that the same does not expressly provide for reservation from the sports category. It is these two conditions which are stated to be prejudicial to the interest of the petitioner as, in view of the petitioner, the same would result in petitioner's becoming in-eligible for admission.

4. Mr. Khehar, learned Senior Advocate, appearing on behalf of the petitioner, vehemently contends that the petitioner had rigorously devoted herself to achieve better grading in sports with the sole object of seeking admission in MBBS Course against reserved seats meant for sports category and thus she could not be denied admission by deleting from the prospectus the reservation earlier provided for the distinguished sports persons. It is also being argued that the U.T. Chandigarh, through its Home Secretary had issued instructions to all the Administrative Secretaries in the U.T. as also the Heads of the Departments in the U.T. Chandigarh, with regard to reservation for admission in educational institutions controlled by the Chandigarh Administration. In the said instructions it was clearly provided that 2% of the seats would be filled-up from amongst the sportsmen-sportswomen as per the guidelines annexed with the said instructions. It is, thus, the case of the petitioner that as long as the instructions, as referred to above, dated May 7, 1993, Annexur P-3, were in force and had not

been rescinded, superseded or altered, respondent No. 2 was not empowered to delete the reservation provided in the sports category by issuing prospectus contrary to the instructions or guidelines, referred to above.

5. The question raised by learned counsel, perhaps required consideration and even we were inclined to call upon the respondents by issuing notice of motion but in view of another insurmountable difficulty in the way of the petitioner, we rather chose not to determine this controversy and deemed it appropriate to decide the same in some other case. It is the case of the petitioner herself, so pleaded in paragraph 4 of the petition that a candidate has to secure atleast 50% marks in the CET so that he/she may be eligible to seek admission in MBBS Course conducted by the Medical College, Chandigarh. Admittedly, the petitioner is far below from the cut of percentage fixed for eligibility for admission in MBBS Course.

6. Confronted with this, learned counsel made two fold submissions, which need immediate notice. His first contention is that for a reserved category there can not be any cut of per centage of marks in the CET and irrespective of marks obtained by a candidate in the CET, if she/he comes within the parameters of eligibility of a reserved category, he/she has to be admitted. For this afore stated contention, learned counsel relies upon a decision of the apex Court in Sandeep Brar and Anr. v. State of Punjab and Ors. 1993 (1) S.L.R. 123. We have gone through the decision rendered by the Supreme Court in Sandeep Brar's case (supra) and are of the considered view that the same can not apply to the facts of the case in hand. It would be seen from the facts of the said case that the Punjab Government by a notification dated April 21, 1989 had announced the policy for admission to MBBS/BDS Courses for the session 1989-90 in all the three State Medical Colleges and two State Dental Colleges. Two per cent seats were reserved for sportsmen/sportswomen. The relevant part of the said notification reads as follows:- "In the reserved category of sportsmen/sportswomen the admission shall be made from amongst the eligible candidates on the basis of their gradation done by the department of Sports, Punjab.....Sportsmen/sportswomen shall be eligible if they secure a minimum of 35% marks in the U.T." The procedure for issuing sports Gradation Certificate was provided by the instructions dated August 6, 1986 issued by the Punjab Government. The admission policy was challenged on various grounds and a Division Bench of this Court struck down the admissions on the basis of gradation certificates and held that instead of grading the sportsmen under the Government instructions dated August 6, 1986, weightage as provided in the Presidential order dated August 30, 1984, should be the governing factor in the admissions to reserve for sportsmen/sportswomen. This Court held that "the academic excellence was not to be given a go by even for reserved categories. When the main object is to produce doctors and not sportsmen, the government policy in that regard is oriented to achieve academically sound doctors but interlaced, within tolerable limits, some sports elements. One can not imagine situation when a candidate aspiring to become a doctor adopts the sports route

to become one by design. Rather it is the sports instinct which makes him a sportsman. And if in achieving the excellence thereof he somewhat lags behind in his academic pursuits the Government policy right from 1962 onwards has been to give him a head start at a tolerable and acceptable base. In no case can the policy of the Government be so spelled, as is urged on behalf of the respondents to mean that on acquiring the minimum eligible of 35 per cent further relative merit of the candidate in the sports category loses all significance and that the sports certificate higher in grade determines the admission. We can never subscribe to such view, result oriented and objective as the products of the Medical and Dental Colleges are supposed to be". But the apex Court, in an appeal preferred against the judgment of this Court, held that the methodology for admission to reserved category of sportsmen/sportswomen was the function of the State and had to be decided by the State Government. It is the function of the executive to lay down the procedure for admission to the reserved categories. While holding so, judgment of the High Court was set-aside. It is apparent from the facts of the case aforesaid (Sandeep Brar's case) reproduced above, that the only question debated therein was as to whether precedence should be given to those who had better grading in sports or to those who had secured more marks within the same reserved category of sportsmen/sportswomen. It requires to be mentioned here that even in the said case the minimum eligibility for a sportsmen/sportswomen was fixed to be 35% marks in the CET. In the present case, there is no dispute of the kind that was involved in Sandeep Brar's case. The contention of learned counsel that there can not be any cut of percentage for a reserved category, like sportsmen/sportswomen, in the CET is, thus, repelled.

7. The second contention of the learned counsel with regard to fixation of minimum per centage in the CET is that the Medical Council of India had indicated the criteria for selection of students for admission to MBBS Course and it was not necessary, as per the criteria aforesaid, to fix a minimum per centage of marks in the CET as, minimum marks could also be prescribed of the qualifying examination i.e. in the present case, 10 + 2. The contention of learned counsel is totally devoid of merit. The relevant recommendations of the Medical Council of India have been extracted by the petitioner herself in paragraph 8. The same read thus:-

"Provided also that a candidate for admission to the medical course must have obtained not less than 50% of the total marks in English and Science subjects taken together (i) at the qualifying examination (or at a higher examination) in the case of medical colleges where the admissions are made on the basis of marks obtained at these examinations or (ii) 50% of the total marks in English and Science subjects taken together at the competitive Entrance Examination where such examinations are held for selection.

Provided further that in respect of candidates belonging to scheduled castes/scheduled tribes, the minimum marks required for admission shall be 40% in lieu

of 50% for general candidates."

A perusal of the guidelines, reproduced above, would thus clearly demonstrate that 50% of the total marks in English and Science subjects in the qualifying examination is only with regard to the institutions where the said examination alone is the basis for admission in the MBBS Course. Admittedly, a separate examination is held for admission to the institution where the petitioner applied which is CET. The contention of learned counsel is, thus, not even supported from the guidelines issued by the Medical Council of India. That apart, the apex Court as also this Court has held that the entrance test facilitates the assessment of comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination. This was so ruled by the apex Court for the first time in *Ajay Hasia and Ors. v. Khalid Mujib Sehrwardi and Ors.* (1981) SCC 722. The observations, as mentioned above, came to be made by the Supreme Court while considering the challenge of students to the entrance test and ignoring the marks obtained by them in the qualifying examination. The different standard of education adopted by various Universities in the courses, examinations, standard of marking and other factors were perhaps the basic determining factors for holding an entrance test. It was felt that in some universities courses that were followed were far easier as compared to other universities as also that standard of teaching and marking was entirely different. It is for that precise reason that the Supreme Court in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, , ordered that no State Government or University or Medical College shall grant admission to students to fill the minimum 30% open seats not reserved on the basis of residence requirement or institutional preference for the MBBS Course or to 50% open seats not reserved on the basis of institutional preference for post graduate courses such as MD and MS and on the basis of comparison of the marks obtained by them at different qualifying examinations held by different State/ Universities and that entrance examination would be open to all qualified candidates throughout the country.

9. We are of the considered opinion that the decision of the authorities in fixing minimum per centage of marks for eligibility in admission to MBBS Course for even reserved categories like sports and others and even for Scheduled caste/ Scheduled Tribes (for the latter minimum per centage of marks to be obtained in the CET is 40%) is a step in right direction. Those, who are admitted to the MBBS Course become doctors after successfully going through the course. Some of them go for higher studies like MD and MS and even further for specialities and super-specialities of medicines and surgery. Whether they are in government job after going through their studies or are private practitioners, they all are to be busy in looking after the sufferings of teeming millions of the country. The work carried out by them is of utmost importance to the human kind and the Nation. Efficient doctors are, thus, necessary for every society and the Nation as a whole expects them to reach all heights of profession and excellence. Not

providing minimum per centage of marks in the CET for such an important profession would result in candidate securing admission even by securing 10 marks or even for that matter on mark or zero in the CET. Whereas, it would be equally difficult for such candidates to even go through successfully the difficult studies in store for them, it shall also be hazardous for a common man to be treated by them, if ultimately they somehow scrape through their studies by putting in far many more years than of their counterparts having far better per centage of marks in the CET. As mentioned above, quite a few candidates securing admissions in MBBS and ultimately becoming doctors, would be absorbed in government job. Insofar as sports category is concerned, reservation in the said category is of recent past but insofar as the claim of SC/ST for admission in professional courses or in service is concerned, the same has been recognised by the Constitution ever since beginning. It may be recalled that for SC/ST category as well minimum 40% marks in CET have been provided to make them eligible for admission. Even the claim of SC/STs is to be considered consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State, in view of Article 335 of the Constitution of India. Article 51-A of the Constitution of India enjoins upon every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. In considered view of this Court, fixation of minimum per centage of marks in CET for admission to MBBS Course is laudable and, thus, deserves to be approved. Petition is devoid of any merit and is, therefore, dismissed in limine.