

(1996) 09 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1703 of 1996

Manisha Gupta

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Dentists (Amendment) Act, 1993 — Section 10A

Citation : (1997) 1 ShimLC 422

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; Indar Singh, General for the Respondent No. 1, D.C. Jishtu, for the Respondent No. 3 and M.S. Chandel, for the Respondents No.4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Petitioner in this case applied for M.B.B.S and B.D.S courses and took part in the common entrance examination held by the Government for free seats in the professional colleges. She was not selected there as she had secured 166 marks out of 300 marks whereas the last candidate who got admitted had obtained 183 marks.

2. The case of the Petitioner in this writ petition is that Respondents 4 and 5 are bound to follow the provisions of the Scheme framed by the Supreme Court of India in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., The relevant part of the Scheme provided that no professional college shall call for applications for admission separately or individually and all the applications for admission to all the seats available in such colleges shall be called for by the competent authority alone, alongwith applications for admission to Government/University colleges of similar nature In the scheme it is also provided that allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free

seats. The expression "competent authority" has been defined in the Scheme as the Government, University or other authority as is competent to grant permission to establish or to grant recognition to a professional college.

3. It is the contention of the Petitioner that Respondents No. 4 and 5 did not follow the procedure prescribed in the said Scheme but they seem to have gone ahead with the process of admitting the students. As the Petitioner was not aware on what basis the students were admitted, she has filed the writ petition with a prayer that Respondents No. 4 and 5 should be directed to fill in seats, other than free seats, in the fourth Respondent-College strictly in accordance with the Scheme framed by the Supreme Court in Unni Krishnan's case. Even the Petitioner has admitted in his petition that the Scheme was subsequently modified from time to time under various judgments of the Supreme Court though, of course, the Petitioner does not disclose what exactly is the modification made by the Supreme Court.

4. In reply, Respondents No. 4 and 5 have stated that the University, which is the third Respondent herein, did not advertise for admission to the payment seats and they confined their advertisement to calling for applications to 50 percent free seats. The University had made selection for the said 50 per cent seats on the basis of entrance test held by them and filling up of remaining 50 percent payment seats was left in the lurch. In that situation Respondents No. 4 and 5 caused the advertisement to be published in the dailies, "The Indian Express" and "The Tribune" dated 17-7-1996 calling for applications from persons who sought for admission to payment seats in the college for the session 1996-97. 10 per cent of the total seats, namely, 9 seats were reserved for N.R.I. candidates and the remaining 21 seats were to be filled up on the basis of merit pursuant to advertisement calling for applications. It is the statement of Respondents that 223 candidates applied in response to the advertisement and their marks obtained in the qualifying examination were considered and on the basis of the same, the first 21 candidates were selected. It is seen from the annexures filed by Respondents 4 and 5, namely, Annexure R-4/O. that the last of the students, who was selected got 80.2% percent marks. On that basis, the Respondents sent intimations to the said 21 candidates informing them that they will be admitted on the basis of the selection to the first year B.D.S. course against payment seats. Those communications were issued on 20-8-1996.

5. This writ petition was filed in the Registry on 19-8-1996 and it came up for orders in the first instance on 22-8-1996. On that date while ordering notice for rule nisi, the Bench directed Respondents 4 and 5 to give admission against payment seats strictly in accordance with the Scheme formulated and approved by the Supreme Court in Unni Krishnan's case. Naturally, the said direction could not be complied with as there was not even an advertisement from the Competent Authority as contemplated by the Scheme. The matter has come up now after Respondents 4 and 5 filed the reply.

6. Learned Counsel for Respondents 4 and 5 brings to our notice the judgment of

the Supreme Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc., and submits that the guidelines contained in Unni Krishnan's case were subsequently modified to a considerable extent and the modified guidelines in the ruling would apply in the present case. We are unable to accept this contention as we find that the said case was confined to minority educational institutions and the directions were given only to such institutions. In fact, in the course of judgment, the Bench of the Supreme Court made a reference to the regulations framed by the Dental Council under the Dentists Act, 1948. They also referred to Section 10A, which was enacted by Amendment Act 30 of 1993. They also referred to Regulation No. 3, which defines in Clause (b), the expression "competent authority" as a Government or University or any other authority as may be designated by the Government or the University or by law to allot students for admissions to various dental colleges in a State or Union Territory. That is practically the same definition as given by the Supreme Court in the Scheme framed in Unni Krishnan's case.

7. No doubt, Respondents No. 4 and 5 have not acted in accordance with the Scheme framed in Unni Krishnan's case or in accordance with the regulations framed by the Dental Council. A copy of the regulations has been furnished to us by Counsel for the University. Regulation No. 5 prescribes the Admission procedure. Clause (b) of Regulation No. 5 states that only the competent authority shall call for applications for admission to all seats available in private dental colleges along with the applications for admission to Government/University colleges of similar nature. Clause (d) provides that the competent authority shall prepare a merit list on the basis of a common entrance examination from amongst the successful candidates where common entrance examination is held or in essence of an entrance examination by such criteria as may be determined by the competent authority.

8. It is unfortunate that the third Respondent-University has also not adopted the procedure prescribed by the said regulations. They had not advertised for a common entrance examination for private colleges as against payment seats also. As pointed out already, they advertised only with regard to 50 percent of the total number of seats, which represented free seats. In such a situation, Respondents 4 and 5 have also not adopted the procedure prescribed by the Dental Council. It has also been brought to our notice that even after the judgment in Unni Krishnan's case in this State the Scheme, as framed by the Supreme Court, has not been followed by the professional colleges; nor the regulations framed by the Dental Council have been followed.

9. In this case, on the facts already stated, we find that the Petitioner who had appeared in the common entrance test held by the University for free seats had failed to secure requisite number of marks so as to get an admission. Thereafter, when the advertisement was made by Respondents 4 and 5 on 17-7-1996, the Petitioner did not apply for being considered for admission on payment seats. No doubt, it is her case that she is not aware of the said advertisement, though it

was published in two popular dailies, which are in large circulation in the State. No doubt, even if we accept that statement that she was not aware of the said advertisement, that will not give her any right to get automatically the reliefs, prayed for by her in this case. Admittedly, she had secured only 166 marks out of 300 marks in the qualifying examination whereas the last candidate who was admitted had secured 80.22 per cent. Thus the Petitioner even if she had applied for admission to payment seats on the basis of advertisement issued by Respondents No 4 and 5 would not have got admission in view of the marks secured by her in that qualifying examination. We also take note of the fact that by the time this writ petition was taken up for admission by this Court, intimations had been given by Respondents 4 and 5 to the candidates, who are being selected for admission and none of them has been made a party in this proceeding. In such a situation having regard to the practice which was prevailing in the State even after the framing of the Scheme by the Supreme Court in Unni Krishnan's case and having regard to the fact that the University had not chosen to follow the procedure prescribed in the Scheme framed by the Supreme Court in Unni Krishnan's case or the regulations framed by the Dental Council, we are of the opinion that this is not a matter in which we should exercise our discretion under Article 226 of the Constitution of India at the instance of this Petitioner who had no right or chance to get admission to payment seats on the basis of merit and set aside the selection of innocent candidates who had responded to the advertisement issued by Respondents No. 4 and 5.

10. In view of the said facts, we refuse to exercise our power and dismiss this writ petition.

11. However, we give the following directions to Respondents No. 3 to 5 to be strictly complied with in future :

12. From the next academic session onwards the procedure prescribed in regulations framed by the Dental Council of India for admission to all seats available in the private Dental colleges shall be strictly followed by not only Respondents No. 4 and 5 but also by Respondent No. 3. No costs.

C. M. P. No. 3450 of 1996:

In view of the dismissal of the writ petition, the present application is also dismissed and interim order dated 22-8-1996 is vacated.