
(1989) 09 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10623 of 1989

Miss Daljeet Kaur

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1990 P&H 176

Hon'ble Judges : M.M. Punchhi, J;A.L. Bahri, J

Bench : Division Bench

Advocate : Vinod Sharma, for the Appellant; S.K. Syal, D.A.G., H.S. Toor and Sanjiv Manrai, for the Respondent

Judgement

M.M. Punchhi, J.—How do we interface the competing claims of academic excellence and sports excellence in the field of reservation in favour of Sportsmen/Sportswomen, in the context of admissions in the three State Medical Colleges and two State Dental Colleges as per latest policy of the Punjab Government, is the pressing problem which requires solution at our hand.

2. We have two writ petitions, being, CWP Nos. 10623 and 10855 of 1989, which we dispose of by a common order. Though the respective petitioner in each case is different, the private respondents are common, the Principal, Medical College, Amritsar, being an additional respondent in CWP No. 10855 of 1989. The respective petitioners and the respondents are competitors; for the available seven seats reserved for Sportsmen/Sportswomen out of 350 seats in the five Colleges afore-referred to, being 2 per cent reservation. The contesting parties claim to possess B-Grade Certificates, and in quality of one holding preference over the other. We would not go into the intricate details thereof for the present but straightway go to the declared policy of the State Government with regard to the reservation as such. But before we do that, we shall as a prelude observe that both parties relied on policy letters of the Punjab Government, appended as various annexures to the writ petitions and the prospectus issued by the Guru

Nanak Dev University for the academic session starting in the year 1989, obvious of the Punjab Government notification dated April 21, 1989, published in the Gazette (Extraordinary) of the same date, declaring the up to date policy in modification of the earlier policy, on the basis of which the prospectus of the year 1989 was issued by the University. We have on our own put the photostat copy of the said notification on record for reference. Now the stage is set to examine the competing claims of the parties.

3. To begin with on January 11, 1962, Annexure P-3 in CWP No. 10855 of 1989, the Chief Secretary to Government, Punjab, notified the Government policy in that regard. It was informed that with a view to encourage sports talent the Government had thought of reserving certain percentage of seats for Sportsmen/ Sportswomen for i) admission to technical/medical institution in the State; and ii) recruitment to service under the State, though the Punjab Public Service Commission/Subordinate Services Selection Board. The policy postulated that the Sportsmen shall be graded as follows:

Grade-A: Sportsmen of International standing;

Grade-B : Sportsmen of national standing;

Grade-C: Sportsmen of State's status;

Grade-D : Sportsmen without achieving State's Status.

with regard to the award of marks to Sportsmen candidates, the Punjab Public Service Commission or the Subordinate Services Selection Board; or other bodies responsible for selection were required to adopt the system; of marking, each department fixing a quantum of marks which may not exceed a particular total. The quantum, however, was variable from service to service at the discretion of the recruiting department. The persons concerned were advised to obtain certificate from the Sports Department, which obviously meant that the Sports Department was required to grade appropriately the sportsmen seeking reservation. Later, on May 3, 1983, vide annexure P-4, the Government in reference to the earlier letter dated January 11, 1962, and subsequent instruction issued from time to time in that regard on May 20, 1982, thought of superseding; the later instructions of the year 1982 and decide to grade the certificate in the following descending order of merit:

Grade-A: Sportsmen of international standing;

Grade-B: Sportsmen of national standing;

Grade-C: Sportsmen of State's standing;

Grade-D: Sportsmen; of District standing.

The Government policy also classified sports into popular games and comparatively less popular games. With regard to inter se rating in the same grade a descending order was laid down i.e. a) Record Holders in any event; b)

Wineers; c) Runners up; d) Third position holders; e) number of times participated; and f) number of disciplines participated. It was further provided that the unambiguous clarification of a sportsman in a lower grade shall be pre-requisite for acceptability in the higher grade. Instructions Annexure P-4 were revised on August 6, 1986 vide Annexure P-5 and the criteria for grant of sports gradation certificates was reframed. The descending order of Grade A to D was maintained but a list of sports disciplines was given in the order of preference. The rating inter se in the same grade was almost repeated on the same lines. It was categorically stated that participation in lower grade shall be a pre-requisite for acceptability in the higher grade. For instance, no achievement in have been achieved through participation in Grades B, C and D. Similarly for recognition of an achievement in Grade-B participation in Grade C and D will be. necessary.

4. These policy letters gave rise to some litigation in this Court. In *Maninder Kaur and Others Vs. State of Punjab and Others*, , a single Bench of this Court interpreted policy decision dated January II, 1962 (Annexure P-3) and the Presidential Order dated August 30, 1984, issued thereafter. In that case the Presidential Order, afore-referred to, taking into account the policy decision dated January 11, 1962, provided a system of weightage to add marks secured in the admission test in respect of Sportsmen/ Sportswomen based upon their sports gradation mentioned below:

Grade-A: 8% of the marks secured in the Written test.

Grade-B: 5% of the marks secured in the written test;

Grade-C: 3% of the marks secured in the written test;

Grade-D: 2% of the marks secured; in the written test.

Addition of such weightage to the results obtained in the academic filed of Pre Medical Test (P.M.T.) was challenged in that case. The Hon'ble Judge took the view that though reservation had been made to encourage sports talent, yet on the basis of the formula adopted by the Government, best possible sportsmen having A-Grade certificates could be ignored and the candidates possessing C or D Grade certificates would get admission and that on the face of it was irrational and arbitrary. He took the view that the said formula was neither likely to produce outstanding doctors nor outstanding sportsmen. He thus ruled that if the policy contained in letter January 11, 1962, had to have any meaning, then essentially qua the sportsmen/ sportswomen who have qualified the P.M. Test and have thus come to form a class by themselves, the only consideration that should prevail with the authorities for purposes of these admission apparently has to be the rating of these candidates in the light of their performance in the field of sports. He thus quashed the rule of weightages as given in the Presidential Order dated August 30, 1984, for it is by that means alone that claim of A-Graded Sportmen irrespective of their academic merit could be, and was, sustained.

5. The correctness of Maninder Kaur's case (supra) was doubted. A Division Bench of this Court in Ranbir Singh Vs. Thapar Institute of Engineering and Technology, Patiala and Another,), overruled that view. The view taken by the Division Bench was that the admission related to a professional college and not to a Sports College and that in order to pass an examination in such professional colleges a candidate should have good academic career, otherwise it may not be possible for him to pass the same. It was further observed that no useful purpose would be served if students who are unable to get through examination are admitted. In Ranbir Singh's case (supra) A, B, C and D Grades of sports certificates were given respective weightages of some percentage of marks. So, this Court in the matter of admission to professional college ruled in favour of employing sports certificates of various grades for giving weightages alone. And if we may now say so at this juncture even in the original policy dated January 11, 1962, the selecting authorities were required to give some marks to the various grades not exceeding 25.

6. Games classified as major and minor were held to be arbitrary, having no nexus with the object sought to be achieved in Somvir Vs. State of Haryana and Others, . In the same context, but in Haryana, classifying games and games i.e. Popular games and comparatively less popular games as given out in Punjab Government instructions dated May 3, 1983, Annexure P-4, were struck down by a Division Bench of this Court in Sandeep Goyal v. State of Punjab 1986 Lab IC 1237 being violative of Art. 14 of the Constitution. The Bench observed that order classifications given in paragraphs 1 and 3 of the instructions in regard to the Grades of Sportsman and the order of preference in the same Grade, have not been impugned before them, but otherwise the classifications in this behalf were thought to be quite reasonable.

7. The Presidential Order dated August 30, 1984, reproduced in Maninder Kaur and Others Vs. State of Punjab and Others, mentions the eligibility for admission to MBBS/BDS Courses in the following terms:--

"(a) Admission shall be given on the basis of relative merit of candidates determined on the result of the competitive entrance examination. In the case of reserved seats relative merit of the candidates shall be determined within each category; of reservation except that in the category of sportsmen/ sportswomen, merit shall be determined as follows:--

Weight age will be added to the marks secured in the admission test in respect of sportmen/sportswomen based upon their sports gradation as mentioned below:

XXXXXX"

From the relative merit of the candidates within each category, the category of sportsmen/ sportswomen was excepted as they were entitled to weightages dependent on the grade of their certificates over and above the relative merit.

8. The Presidential Order, which is now in vogue, dated April 21, 1989, now

provides that for all the five Colleges, afore-referred to, there shall be a Competitive Entrance Examination (P.M.T.) in four compulsory subjects named therein, ordering the Guru Nanak Dev University to hold the examination on behalf of the Government of Punjab. Eligibility for admission to MBBS/BDS Courses is provided in Clause III of the Presidential Order. It says; as follows:

"III. Eligibility for admission to MBBS/BDS Courses: (a) (i) Admission shall be made on the basis of the relative merit of candidates determined on the result of the Competitive Entrance Examination (P. M. T.). In the case of reserved seats relative merit of the candidate shall be determined within each category of reservation. 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. In the reserved category of children/ widows of the defence personnel, candidates of sub-category vii (2) mentioned in Para-III(c) infra, shall be admitted only if eligible candidates of Sub-category vii (I) are not available. A candidate must secure a minimum of 50 per cent marks in the Competitive Entrance Examination (P.M.T.) to qualify for the admission. However, candidates belonging to the Scheduled Castes/Scheduled Tribes shall be eligible if they secure a minimum of 25% marks. Sportsmen/ Sportswomen children/grand children of the political sufferers, handicapped candidates, and November, 1984 Riots Affected Displace persons/ Terrorist Affected persons (dependents of Terrorist Affected families in Punjab) shall be eligible if they secure a minimum of 35% marks in the P.M.T. (ii) The candidate applying for reserve category/ies should carefully indicate his/her claim for the reserve category/ies in the admission form to be submitted to the Guru Nanak Dev University, Amritsar, in the first instance. No change of category/ies will be entertained/permitted at the later stage in the application form to be submitted to the Principal, Medical/Dental College, Amritsar. This condition will be strictly followed and the original admission form of the Competitive Entrance Examination (P.M.T.) 1989 of the candidates will be transferred by the office of the Guru Nanak Dev University, Amritsar, to the office of Principal, Medical/ Dental College, Amritsar, soon; after issuing the Roll Nos. for the Competitive Entrance Examination of 1989 for verification.

Notes: Seats left vacant in any reserve category, owing to non-availability of eligible candidates, may be filled from the eligible candidates belonging to the general category."

As is evident, there is a change in the Presidential Order dated May 3, 1984 and the Presidential Order dated April 21, 1989. The first sentence of the latter order prescribed that the admission shall be made on the basis of the relative merit of candidates determined on the result of the Competitive Entrance Examination (P.M.T.). The second sentence prescribes that in the case of reserved seats relative merit of the candidates shall be determined within each category of reservation. The words "except that in the category of sportsmen/sportswomen merit shall be determined as follows" as occurring in the Presidential Order dated

August 30, 1984, reproduced in *Maninder Kaur and Others Vs. State of Punjab and Others*, are not there in the latest Presidential Order of April 21, 1989. Rather a new sentence has been added, which is the third one. It is to the effect that 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. The expression "the admission" is the same admission which is referred to in the first sentence, which means the admission which is to be made on the relative merit of the candidates determined on the result of the Competitive Entrance Examination and in the case of reserve seats relative merit of the candidates shall be determined within each category of reservation, which means including the reserved category of Sportsmen/Sportswomen also. The Guru Nanak Dev University while issuing the Prospectus mistakenly give out the same language as was occurring in the Presidential Order of the year 1984 by providing as follows:--

"In the case of reserve seats the relative merit of the candidate shall be determined within each category of reservation except that in the category of Sportsmen/Sportswomen."

This is contrary to the introductory note in the Prospectus which says that the Prospectus was based on the Punjab Government's Notification No. 22/58-5HB-I1I-89/7088 dated 21st April, 1989. The University seemingly did not appreciate the difference which had modifyingly, as per clause (VII) of the Order, been introduced presumably to highlight what this Court had held in *Ranbir Singh's Case* (AIR 1988 Punj; & Har 51) (*supra*), that is to say, that over and above the relative merit of each candidate in the reserve 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, to which weightages would be added. As we view it, the Presidential Order of April 21, 1989, took stock of the views of this Court on the subject and couched eligibility in Clause III in such plain language, since weightages on the basis of grade sports certificates had been accepted by this Court in *Ranbir Singh's case* (*supra*).

9. Our view and impression in that regard is further fortified by the other provisions of the Presidential Order. Sub-cl. (iii) of Cl. III provides as under:--

"(iii) Where two or more candidates have secured equal number of marks in the P.M.T. their inter se merit for the admission i.e. the tie between two or more, candidates will be decided on the following criteria in order of preference:--

(1) Candidate obtaining higher aggregate marks in qualifying examination in four subjects of 10 plus 2 examination of CBSE/Punjab School Education Board :

(2) Candidate obtaining higher marks in Biology in the qualifying examination.

(3) Candidate older in age."

This shows that academic excellence is not 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 element. One cannot imagine a 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 percent 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. We hold accordingly.

10. As said earlier, the contesting parties hold B-Grade certificates. They have inter se been sub-graded. The justification of the same is given in Annexure R-I of the return filed by respondent No. 5 in CWP No. 110632 of 1989. That is based on letter of the Director of Sports, Punjab, dated August 6, 1986. It provides that for the purpose of determining the inter se seniority of the Sports Graduation Certificates in case of tie between the same grade certificate held in senior and junior categories of compensation, the former will have precedence and in case of inter-University State Championships, the former will have precedence. Illustratively it provides that the holder of the "B" grade senior certificate will have precedence over the holding of "B" grade junior certificate. Further, "B" grade junior certificate will have precedence over "B" grade school certificate. This sub-gradation has been made by the Director of Sports, Punjab, and not by the Government. The Presidential Order providing weightage to B-Grade Sportsmen to the extent of 5 per cent of the marks secured in the written test would be applicable to all irrespective of the sub-gradation in the B-Grade Certificate. It is only to resolve a tie that the Director of Sports has issued the said instruction. That instruction, in our view, if employed with a wide amplitude would violate the Presidential Orders of the year 1984 as also of the year 1989. It is the academic excellence within the meaning of Clause-III(iii) that will in the first instance determine the order of preference and not the instruction of the Director of Sports though later it may be employed to resolve a tie. In CWP No. 5368 of 1986 (*Miss Neelima Bensal v. State of Punjab*) decided on 19-11-1986, a single Bench of this Court quashed the said instructions of the Director of Sports by observing that further division of B-Grade Junior Certificate was wrong in law. The instruction as kept alive, in our view, is for limited application as the Director of Sports cannot issue any instructions which throw overboard the Presidential Order of April 21, 1989, and the earlier Presidential Order of 1984.

11. Lastly, the respondents relied upon a decision of the Supreme Court in *Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner*

and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors,) to contend that pre-eminence in sports and not academic excellence was allowed by the Supreme Court. It was so held as contended, but in the facts and circumstances of that case. The procedure therein issued by the State Government of Tamil Nadu for admission to the MBBS Course specifically reserved seats in favour of the eminent sportsmen, giving an order of preference, without resort to academic achievements. The academic achievements, however, figured when the Madras High Court was confronted as to how to resolve a tie between two equals. The Madras High Court opted for the academic achievement of the tied ones to be the determining factor. The Supreme Court upheld it. Nowhere has it been held as an abstract proposition of law that when sportsmen are given a reservation their sports eminence is to predominate over academic excellence. It depends upon the terms of the governmental policy. As detailed out earlier, the Government policy right from the beginning has been to give some marks to sportsmen over and above what they earn academically, so as to induct them in professional colleges and Government service. Nowhere has the Government policy in Punjab been to throw academic excellence to the winds. Khalid Hussain's case (*supra*) in this case on its own facts and cannot be said to have universal applicability.

12. Now since we are about to conclude the matter, we think it appropriate to state that on attainment of 35 per cent marks in the pre Entries Text (P.M.T.) a candidate competing in the sports category becomes eligible for admission and not that he becomes entitled to admission. Being a sportsman/ sportswomen make him/her eligible on a lesser percentage, whereas his counterparts in no general category have to obtain 50 per cent. There is no room for the argument to say that why the Scheduled Castes and Backward Classes become eligible on attainment of 25 per cent. It has not to be forgotten that even amongst the Scheduled Castes, it is the relative merit which governs the admission. Similarly and logically it is relative merit amongst the sports category candidates which will determine admission, but that relative merit would have to be redrawn by giving weightages on the basis of the grade of the certificates as given in the Presidential Order, reproduced in *Maninder Kaur and Others Vs. State of Punjab and Others*, which has not been rescinded or withdrawn. It has only been modified in the later Presidential Order dated April 21, 1989, so as to effectuate, as is our view, the rule laid down by this Court in *Ranbir Singh Vs. Thapar Institute of Engineering and Technology, Patiala and Another*, . We hold it accordingly.

13. Having clarified the upto date policy of the Government with regard to the admission to the MBBS/BDS Course in the five Medical Colleges in the State, we do not feel the necessity of discerning and setting the respective claims of each candidate over the other, so as to conclude as to who is entitled to admission. We leave thus the finalisation of admission to the College Authorities and dispose of the writ petitions. No costs.

14. Order accordingly.