
(2001) 07 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15652 of 2000

Miss Simi Agarwal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2001) 07 P&H CK 0028

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.K. Gupta, for the Appellant; Mr. R.D. Sharma, AAG, Mr. Girish Agnihotri, Mr. P.S. Birla, Mr. Ajay Lamba and Mr. Vinish Singla, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Miss Simi Agarwal daughter of Shri K.L. Agarwal, resident of Panchkula has filed the present petition under Articles 226/227 of the Constitution of India against the respondents for issuance of appropriate writ and directions specially in the nature of mandamus directing the respondents to give admission to the petitioner against free seat, on charging fees equivalent to government colleges as per the Scheme framed by the Hon"ble Supreme Court of India in case reported as Unnikrishnan P.J. and others v. State of Andhra Pradesh and others 1993(2) SCT 512 (SC) : AIR 1993 S.C. 2138 and to direct the respondents to distribute the seats allotted as "free seats" and "payments seats" and to fix the payment of fees for the same in consonance with the Scheme/Guidelines issued by the Hon"ble Supreme Court. It was further prayed by the petitioner that this court should declare the fees structure and demand of Rs. 2.05 lacs, per year, by respondent No. 4 for admission to M.D.S. Course as unconstitutional, illegal, without jurisdiction and against the scheme framed by the Constitution of India.

2. The brief facts of the case are that the petitioner obtained a degree of Bachelor of Dental Surgery (B.D.S.) in April, 1995. She appeared for the Entrance

Examination for admission to M.D.S. Course conducted by the Guru Jambheshwar University, Hissar and was placed at Serial No. 3 in the merit list. On 29.10.2000 and on 8.11.2000 the petitioner attended the counselling for the above course and was selected and was placed at serial No. 3 in the merit list. According to the petitioner, respondent No. 2 i.e. the University, issued prospectus for the entrance examination and, as per the prospectus, the candidate was required to deposit fees as stipulated in the prospectus. The grouse of the petitioner in nut-shell is that respondent No. 4-college is making a demand for Rs. 2.05 lacs as fees per year. This stipulation in the prospectus is illegal, violative of the directions given by the Hon''ble Supreme Court of India in a famous case Unnikrishnan v. State of Andhra Pradesh. The petitioner was asked to deposit the fees of Rs. 2.05 lacs for one year. When the petitioner asked for the details, she was not furnished with any detail. The authorities did not give in writing to the petitioner the last date for the deposit of the fees.

3. The second grouse of the petitioner is that as per the prospectus the number of seats allotted for M.D.S. Course as sanctioned by the Dental Council of India were 9. The college-authorities have divided 9 seats in the following manner :-

(i) Periodontics 3 (ii) Periodontics 3 (iii) Orthodontics 3

This distribution is wrong according to the petitioner. Out of 9 seats, 6 seats are meant for general category whereas 3 seats are reserved for N.R.I./Foreign candidates. As per the petitioner, 50% seats are supposed to be treated as free seats as per the dictum of the Hon''ble Supreme Court and 50% seats are supposed to be paid seats, but the college-authorities have not adopted this criteria. It is also the major grouse of the petitioner in the writ petition that as per the guidelines issued by the Hon''ble Supreme Court in the said case the State Government was required to constitute a Committee to fix the ceiling on the fees chargeable by the professional college. This Committee was supposed to be consisted of Vice-Chancellor, Secretary Education as well as Director Medical Education, Director Technical Education and thereafter the fees is to be fixed by the said Committee. In the present case, respondent No. 4 (College) has not sought any guidelines from the appropriate authority. No Committee has been constituted, rather fee structure has been fixed at Rs. 2.05 lacs arbitrarily in violation of the guidelines/scheme framed by the Hon''ble Supreme Court. Also is the grouse of the petitioner that in other professional colleges, the structure of the fee is very nominal and less as compared to the structure demanded by respondent No. 4 i.e. Rs. 2.05 lacs per year and, therefore, directions which have been referred to by me in paragraph 1 of the judgment may be issued against the respondent-authorities.

4. Notice of the writ petition was given to the respondents. A joint written statement was filed by respondent Nos. 1 and 2. According to these respondents vide Haryana Government letter dated 4.9.2000, Guru Jambheshwar University, Hisar, was declared a competent authority to conduct the entrance examination for M.D.S. Course for the year 2000. The test was conducted. The petitioner also

appeared; result was declared and she qualified the test. The admission was to be made for the following specialities sanctioned by the Dental Council of India :

1. Conservative Dentistry and Endodontics - 3
2. Prostodontics including Crown and Bridge - 3
3. Oral and Maxillofacial Surgery - 3

The above specialities included 6 seats in general category and 3 seats for NRI/Foreign/NRI sponsored candidates. The stand taken up by these respondents is that there is a two-tier system provided for admission to NRI speciality - one is free seat and the other is NRI/Foreign/NRI sponsored candidates. There being no provision of paid seats, therefore, the plea raised by the petitioner is wholly without any basis. It is further pleaded by respondent Nos. 1 and 2 that as per the information provided by respondent No. 4 i.e. College, their institute is affiliated to Kurukshetra University who has prescribed the fee structure of Rs. 1,00,000/- per annum for general category and Rs. 33,000/- U.S. Dollars for NRI/Foreign/NRI sponsored candidates for the entire course. Besides, the college has prescribed certain funds chargeable along with fee of Rs. 1,00,000/- which are as under :-

Amalgamated Fund - 18,000/- Development Fund - 12,000/- Research and Consumable Articles - 35,000/- Caution Fee (Refundable) - 18,000/- Registration Fee - 8,000/- College Security (Refundable) - 5,000/- Instruments Security - 5,000/-

This would mean that the petitioner was aware of the fee to be charged by the institute before appearing in the entrance test or counselling. Now it does not lie in the mouth of the petitioner at this belated stage to allege that fee is being charged from the students without approval of the competent authority and students are being exploited. It is further added that the fee-structure has been the same during the last two years. These respondents further stated that admissions have been made by the answering respondents strictly in accordance with the provisions contained in the prospectus which has the force of law. On merits also, these respondents have denied the material averments of the writ petition and have prayed for the dismissal of the writ petition.

5. Respondent No. 4 has filed separate written statement. It is admitted by this respondent that the present writ petition is liable to be dismissed as is highly belated. The petitioner came in merit for admission to B.D.S. Course for the Session 1999-2000 also. She knew of the fees-structure and applied for extension of time to pay the fees. The time could not be extended in view of the provisions of the prospectus. Even in the present Session, the petitioner acquiesced by making a prayer that she may be allowed to pay the fees in instalments vide letter dated 13.11.2000 and, now she cannot say that the fee-structure fixed by respondent No. 4 which has been approved by the University is bad. On merits, the stand of the College is that the fee- structure has been approved by the competent authority and no fault in reasonableness of fees has been pointed out. Therefore, the writ petition is liable to be dismissed. In reply to

para No. 9 of the writ petition, the stand of the college is that prospectus and the fee structure was forwarded to the University which was duly approved. Thus, it cannot be said that respondent No. 4 has distributed the seats or laid down the fee structure without asking the competent authority.

6. I have heard Shri R.C. Gupta, on behalf of the petitioner, Shri R.D. Sharma, AAG Haryana, on behalf of respondent No. 1, Shri Girish Agnihotri on behalf of respondent No. 2 and Shri Ajay Lamba on behalf of respondent No. 4 and with their assistance, have gone through the records of the case.

7. In my opinion, two points survive for determination (1) Whether the fee structure as laid down in the prospectus is illegal as alleged by the petitioner, and (2) whether the distribution of the seats is in violation of the dictum of the Hon'ble Supreme Court, and (3) whether the writ petition is deserved to be dismissed on the ground of acquiesce.

8. Learned counsel appearing on behalf of the petitioner as well as learned Counsel appearing on behalf of respondent No. 4 relied upon the judgment of the Hon'ble Supreme Court reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and everybody is stretching and interpreting the paragraphs of this judgment in its own manner. According to the petitioner, the Hon'ble Supreme Court was pleased to frame a scheme and as per Clause (sic) of the Scheme which is reproduced in para No. 170 of the said judgment. Every State Government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The Committee shall consist of a Vice-Chancellor, Secretary for Education and Director, Medical Education/Director Technical Education. The Committee shall make such inquiry as it thinks appropriate. It shall, however, give opportunity to the professional colleges (or their association(s), if any) to place such material, as they think fit, It shall, however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate. By interpreting this para, Shri Gupta submits that no Committee has been constituted in order to fix the criteria of fee specially Rs. 2.05 lacs per year as quoted in the prospectus and in the absence of any Committee or its recommendations, the fee structure prescribed in the prospectus is illegal.

9. On the contrary, learned Counsel for the respondents submitted that firstly respondent No. 4 is unaided institution. The standard of fee of an un-aided institution cannot be equated with the aided institutions or Government institutions. Moreover, the fee structure of Rs. 2.05 lacs per year is not irrational. It has the approval of the University. It is not being charged for the first time. The petitioner was even aware of this fee structure when she appeared for the Session 1999-2000. At that time and this time also the petitioner made a prayer that she may be allowed to pay the fees in instalments. Since there is no procedure or rules which allows any candidate to pay the fee by instalment,

therefore, her request was declined. In support of his contention, the learned Counsel for the respondents refers to paragraph 163 of this very judgment which runs as follows :-

"So far as un-aided institutions are concerned, it is obvious that they cannot be compelled to charge the same fee as is charged in Government institutions. If they do so voluntarily, it is perfectly welcome but they cannot be compelled to do so, of the simple reason that they have to meet the cost of imparting education from their own resources - and the main source, apart from donations/charities, if any, can only be the fees collected from the students. It is here that the concepts of self-financing educational institutions and cost-based educational institutions come in. This situation presents several difficult problems. How does one determine the cost of education and how and by whom can it be regulated ? The cost of education may vary, even within the same faculty, from institution to institution. The facilities provided, equipment, infrastructure, standard and quality of education obtaining may vary from institution to institution. The Court cannot certainly do this. It must be done by Government or University or such other authority as may be designated in that behalf."

With this broad contention raised by the learned Counsel for the parties, now I have to adjudicate whether the fee structure of Rs. 2.05 lacs is illegal. It will be proper forme to refer to the written statement of respondent Nos. 1 and 2, which clearly spells out that respondent No. 4 wrote a letter Annexure R-I dated 20.11.2000 and has explained about the break-up of Rs. 2.5 lacs. It has been clearly stated that the University had prescribed the fee of Rs. 1,00,000/- for general category. Besides that the college had included the miscellaneous funds and refundable part to the tune of Rs. 1.5 lacs. The University has also stated in the reply that this very fee structure was being charged for the last two years, meaning thereby that the structure of fee highlighted by respondent No. 4 was approved by the University. The petitioner was well aware about this fee structure. She also appeared for the Session 1999-2000. In these circumstances, I am not in a position to subscribe to the arguments of the learned Counsel for the petitioner that the procedure of charging fees to the tune of Rs. 2.5 lacs was a bad one. Need not to mention that out of Rs. 1.5 lacs, Rs. 28,000/- is refundable. If the guidelines of the Hon"ble Supreme Court are read in the light of paragraph 170 of the judgment, there is no manner of doubt that the fee structure prescribed by respondent No. 4 in the college cannot be held to be violative or unreasonable or against the dictum of the Hon"ble Supreme Court itself. Thus, I decide point Nos. 1 and 3 against the petitioner and in favour of the respondents by holding that the fee structure of Rs. 2.5 lacs is not bad and the petitioner is acquiesced to the fee structure in view of the fact that the petitioner at one point of time made an application that she may be allowed to pay the fee by way of instalments.

10. Now I determine point No. 2 as to whether the distribution of the seats is in violation or not. The argument of the learned Counsel for the petitioner is that

out of the 9 seats, 50% seats are supposed to be treated as free seats and the rest of the seats should be reclassified as paid seats. From the paid seats further there should be distribution. The contention of the learned Counsel for the petitioner is totally devoid of merit. In fact, there were three specialities (1) Conservative Dentistry and Endodontics, (2) Prosthodontics including Crown and Bridge, and (3) Oral and Maxillofacial Surgery. Similarly, there are more specialities. Every speciality has three seats. In this view of the matter, if 50% seats is to be calculated from three seats it comes to 1.5 seats. In this manner, if out of three seats two seats have been reserved for the general category against which a fee of Rs. 2.5 lacs is being charged, there is no harm. Otherwise also, the petitioner is not to lose if 50% out of 9 seats is to be taken, the figure comes to 4.5 seats - say for the benefit of the general category five seats. Still the general category has been given six seats. If there is any possible grouse, it can be only to a candidate of NRI/Foreign/NRI sponsored candidates. Since the petitioner has nothing to lose with the present distribution of the seats, therefore, point No. 2 also goes against the petitioner and in favour of the respondent.

The net result is that there is no merit in the writ petition and the same is hereby dismissed with no order as to costs.

11. Petition dismissed