
(1998) 07 J&K CK 0039
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 370 of 1990

Mohd. Yunis Shah

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1999 J&K 90

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Advocate : A.K. Malik, B.A. Bashir, for the Appellant; A.M. Magrey, for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar, (hereinafter called SKIMS), invited applications

for admission to Post Graduate and Ph. D. Courses in different disciplines, including Medicine for the academic Session, which was to commence

from June, 1990. For the purpose notification was issued on 22-3-1990 (Annexure P-1). The guidelines, eligibility and norms were prescribed in

the notification, as also in the prospectus inter alia for M. D. Course (Annexure P-2).

2. Petitioner applied for the Post Graduate discipline in Medicine. The written test was held on 2-6-1990, followed by practical and Viva-voce

test held from 28-6-90 to 30-6-1990. The result was declared and the petitioner failed to qualify and thereby was not selected for M. D. Course

in the institute (Annexure P-5).

3. The petitioner has in this writ petition challenged selection of other

candidates, respondents 4 to 12 and his non-selection. It is alleged that the official respondents had devised method and manner of selection in such a way that only favourites find place and those having merit are ignored and made to suffer. There are 50 marks for the written test while as for Viva-voce 50 marks have been reserved which is on higher side. Those having more marks in written and do not find place in the selection list, as they have been given less marks in Viva-voce and those having less marks in written test find themselves in selection list as they are given more marks in viva voce. This pattern of examination changes merit into demerit and vice-versa. Not only so, the respondents arbitrarily discriminated against the petitioner, whereas, the candidates bearing Roll Nos. 70231 and 70220 have been selected after they were given more marks in viva voce, though they had secured less marks as compared to the petitioner in written as referred to in para 10 of the petition. Besides one Riyaz Ahmad was allowed to appear in written and Viva-voce test, though not eligible for admission, for he had failed four times in Professional Examination. Similarly, Bashir Ahmad Bhat, Head of the Department of Physical Medicine was chosen as one of the examiners to accommodate his candidate, said Riaz Ahmad Tasleem and to accommodate and get him selected.

4. SKIMS, Soura is as good as any other Government College of the State, and therefore, is governed by the rules of selection as are applicable to the other Government Colleges. It cannot prescribe its own rules and procedure for selection in Post Graduate disciplines and other Ph. D. Courses. On these pleaded grounds petitioner prays for a writ to quash the result and selection and for inducting him in P. G. Discipline in Medicine for the Session 1990-91.

5. Respondents have contested the case and in reply, it is pleaded that no rights of the petitioner have been infringed. The selection has been made in accordance with prescribed rules and procedure as even referred to in the Broucher/Prospectus. The petitioners plea that 50 marks are for viva voce, is wholly incorrect and misplaced. In fact there are only 15 marks for Viva Voce.

6. Out of 100 marks 50 marks are for written, 20 marks are for practical examination of long and short clinical cases, 15 marks for Spots

consisting of X-Ray, Specimen, ECG instruments, equipments and spot cases etc. as applicable to the proposed subject of study and 15 marks for

viva voce.

7. Petitioner's case that half of the marks have been reserved for Viva voce, is misleading.

8. The candidates including the two candidates whose Roll Nos. have been referred in the petition were assessed as per these norms and those

who merited to be selected have been selected. The petitioner has not been at all discriminated against. His case has been considered along with

the cases of other examinees. Riaz Ahmad Tasleem has not been at all selected, therefore, question of accommodating and selecting him does not

arise, notwithstanding, his appearance in the examination as per prescribed eligibility and rules.

9. The SKIMS has been granted the status of a University by the Legislative Act 13 of 1993. The SKIMS is empowered to grant and award

degree/diploma etc indifferent Branches of Medicine and Sciences available at the institute. The Respondent-Institute is also authorised and

empowered to hold the examination for the aforesaid courses/disciplines-after laying down its own procedure and norms. It is misconceived that

SKIMS is just a Medical College of the State and thereby governed by rules as applicable to other Medical Colleges.

10. The argument that SKIMS could not have issued its own guidelines and prescribed eligibility and norms for various disciplines in Post

Graduate Courses and Ph.D. Course on the assumption that SKIMS is as good as the other Government Medical Colleges of the State is

misleading. The SKIMS has been conferred the status and recognised as University by the Legislative Act 13 of 93. In terms of the provisions of

this Act. SKIMS is a distinct identity and University for the purposes specified thereto. Awarding and conferring of degrees and distinctions in

various Disciplines of modern Medical Science and other prescribed science/courses including post Graduate and Ph. D. Courses is within its field.

It is also empowered for the purpose to conduct the examination, issue the guidelines and prescribe eligibility, rules and norms in this regard. If so,

the issuance of the Broucher, Prospectus and rules cannot be questioned. Inviting applications for the Post Graduate and Ph. D. Courses in various

disciplines in terms of Annexure P-1 and Annexure P-2, is in my view in order.

11. Further contention of the counsel for the petitioner is that SKIMS has been improving upon the prospectus and prescribing different norms of

eligibility in the prospectus from time to time for different Sessions which fact would show that the prospectus for the Session 1991 have been bad

and could not have been countenanced. However, it needs to be noted that it is the endeavour of every institution, as an organic identity to improve

upon the method and manner of its examination upgrade eligibility norms and select meritorious candidates out of available lot for higher disciplines

of its concern like Medicine, Surgery etc.

12. The contention that, by earmarking 50 marks for viva voce, the merit is changed in demerit and the de-merit is changed in merit and thereby

arbitrariness and discrimination is perpetrated, cannot be upheld. A bare look at the Broucher reveals that 50 marks are broken in two parts of 20

marks and 30 marks, for written papers. The remaining 50 marks of viva are broken into three parts, 20 marks are for practical examination of

long and short clinical cases, 15 marks have been reserved for spots consisting of X-Ray, specimen, ECG instruments, equipments and spot

cannot etc. as applicable to the discipline applied for and remaining 15 marks are reserved for viva vove. It will be seen that 35 marks arc for

practical examination in Clinical cases and spots. Only 15 marks are left out for the Viva Voce. In other words 85 marks are reserved for written

examination/practical examination. It is only 15 marks (15% of the total weightage) which are reserved for viva voce. The method and manner of

selection adopted and followed by SKIMS in this case appears to be a conscious effort and an exercise undertaken by the experts and those

qualified in field of SKIMS. The allegation of the process of selection suffering from arbitrariness and favouritism and discrimination is not born out

by transparent facts of the case.

13. In the totality of fact situation and circling stances of the case, the procedure prescribed for selection as at that material time appears to be fair

and reasonable. The selection has been fair and not tainted by any irregularity. Mere allegations unsupported by material and documents are not

sufficient to carry the charge of mala fides and arbitrariness and that too when sufficient particulars and circumstances on which allegations are

moored are not disclosed in the petition itself.

14. The counsel for the petitioner has referred to the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, for the proper

situation, that the high weightage of marks for Viva Voce examination in the test for selection is arbitrary and unreasonable. But the principle

evolved in that case is not as such applicable to the facts and circumstances of this case. The SKIMS is not an educational institution/College like

other colleges in the State. It is a University. The allocation of marks is 15% of total marks, for oral interview, for selection of candidates on

examination in written and as also in practical. The selection of the candidates in the facts and circumstances of the case, cannot be questioned on

this count.

15. Apart from above, even if the petitioner's case for selection is for a moment found to be legally sustainable, then would it be possible to restore

him to the position in which he would have been had he been admitted for the academic Session 1990-91, which Session has run out long long

since. In as much as the admission in this case also is sought for the year 1990-91, it is not possible to give the relief to the petitioner at this late

stage, when even 1997-98 Session is approaching to close. It is neither reasonable, nor logical to accommodate the unsuccessful candidate who

appeared in 1990-91 Session examination to be admitted and adjusted against a seat for which he had not even applied from available seat quota

for 1998-99. The Court cannot deprive others at least equally circumstanced and situated as the petitioner from consideration to the

course/discipline of Post Graduate in Medicine or other discipline in Medicine. See Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh

and another, .

16. For the aforesaid reason, the petition is dismissed.