

(1989) 09 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11677 of 1989

Monika Garg and others

APPELLANT

Vs

The Kurukshetra University, Kurukshetra and others

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1990 P&H 194

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

Bench : Division Bench

Advocate : H.L. Sibal, S.C. Sibal and O.P. Goyal, for the Appellant; S.C. Mohunta S.P. Jain and P.S. Patwalia, for the Respondent

Judgement

M.M. Punchhi, J.—Joint admission to the 4 Year Under-graduate Engineering Courses at the Regional Engineering Colleges and Chhotu Ram State College of Engineering, Murthal, situated in the State of Haryana, apparently seems to breed litigation after litigation. This Court in the recent past in CWP No. 6755 of 1989 N.K. Batra and others Vs. The Kurukshetra University and others, , settled a matter with regard to the competing claims of the Central Board of Secondary Education certificate holders and the Haryana Board of School Education certificate holders which met the seal of approval from the Supreme Court expressly in SLP (C) No. 10136 of 1989 (The C. R. State College of Engineering, Murthal and others v. N.K. Batra and others) decided on August 31, 1989. Now close to its heels, we have the instant litigation and this time the period involved in the earlier litigation has been sought to be cashed upon by the respondents in giving preferential treatment to some over the others, the details whereof are as under:

As given in the admission brochure, the qualifying examination for seeking admission to the referred B. Tech Course is that the candidate should have passed the Senior. Secondary Certificate (10 + 2) examination from the Board of Secondary Education, Haryana, or its equivalent. Undeniably, a certificate

obtained from the Central Board of Secondary Education is equivalent to the certificate obtained from the Board of Secondary Education, Haryana. In accordance with clause 5 of the brochure, a candidate will be eligible for admission to the first year of the B. Tech. Degree Course only if he fulfils the requirements as mentioned therein, one of which is that he must satisfy the minimum prescribed qualifications for admission as given in Annexure-III, which has already been taken note of. Now, while submitting the application the candidate must complete it in all respects in his own writing on the prescribed form given at the end of the brochure and should enclose, amongst others, an attested copy of the said certificate from the Board "University/Council showing the detailed marks in the subjects of Physics, Chemistry, Mathematics and English in the qualifying examination on the basis of which admission is sought. The attestation in this case should preferably be by the Head of the Institution last attended. This is the mandate of Clause 8. Further Clause 11 prescribes that June 26, 1989, shall be the last date for submission of applications and which must be complete in all respects and with all enclosures including the attested copy of the certificate showing the detailed marks of the qualifying examination. In accordance with Clause 14, the application received after 5 p. m. on June 26, 1989, or which does not give complete particulars or encloses all the documents indicated in the application form, will not be considered. Clause 15 provides for interview and admission, which we would advert to later. Clause 16 prescribes that at the time of interview the candidate must produce the documents mentioned therein in original before the Admission Committee. Amongst such documents are the certificates and detailed marks-sheet in support of the educational qualification and marks.

2. The petitioners herein claim to have made applications within the prescribed time and having submitted along therewith the requisite certificates. The grouse raised now is that in the meantime certain candidates are likely, at the time of the interview, to press into service substituted marks, which they have obtained in the qualifying examination, of three kinds:

- i) Improved marks of the qualifying examination as held on July 26, 1989, result whereof was declared on August 26, 1989 by the Central Board of Secondary Education.
- ii) Rectification of marks done by scrutiny of the old result both by the Haryana Board and the Central Board.
- iii) Re-evaluation done by the Haryana Board and the Central Board, on the old result.

Grievance was also made that in the letters issued for interview, a note had been appended suggesting that the improved result of the qualifying examination would be taken into consideration, which has put fear in the minds of the petitioners to approach this Court.

3. In the short return filed by respondents Nos. 3 and 5, it has been suggested

that the College would be within its right to take into account the position of qualifying marks as it stood on the date when the candidates are being called for interview since admission would be completed on the date of the interview. In that regard, Clause 15 is pressed into service, which says in hold words:

"THE ADMISSION SHALL BE MADE AT THE TIME OF INTERVIEW AND NO SUBSEQUENT CHANGE IN THE COLLEGE/DISCIPLINE WILL BE ALLOWED. THE CANDIDATE SHOULD, THEREFORE, COME PREPARED WITH HIS PREFERENCE FOR ADMISSION TO THE VARIOUS COLLEGES/DISCIPLINE AT THE TIME OF INTERVIEW AND EXERCISES HIS OPTION WITH DUE CARE."

The newly added respondent No. 6 is also supportive of the same view since he, in the meantime on August 26, 1989, obtained a better result than the result on the basis of which he sought admission by submitting his application form on or before the last i.e. June 26, 1989.

4. The only point which is worth consideration in this petition is -- What is the basis on which admission is to be regulated? The emphasised words in Clause 8, as focussed "earlier, would go to show that the existing attested copy of a certificate from the Board/ University/Council showing the detailed marks in the subject of Physics, Chemistry, Mathematics and English in the qualifying examination as earned on June 26, 1989, was to be the basis regulating admission. Clause 8 is categoric in the observance of this rule. And this rule, like any other rule, can be subjected to some exceptions which would rather go to prove the rule and not oust it. Rectification of a result can be one such exceptions because rectification is only of the original result. It is on the assumption that had proper care been made the result originally would have been that as stood rectified later. Another exception can be re-evaluation, on the same basis; for re-evaluation is a review evaluating it correctly, as it had to be on the original date of evaluation. These two exceptions have to be read in Clause 8 so as to purposively bring the desired result in fixing the date by which admission is to be sought. Improvement of results by means of which a candidate replaces his earlier result by a new examination is totally outside the scope of clause 8, as we view it. If that be permitted, it would set at naught the cut date for making an application for admission. The effort on behalf of the respondents to reckon improved marks in the qualification examination as substitute for the marks obtained in the qualifying examination held prior to June 26, 1989, on the strength of which admission form was filled, would be unfair and negation of fair play and justice. We have no doubt in our mind that the College authorities cannot read such a power in Cl. 8 of the brochure, merely because under Cl. 16 the documents in original are required to be produced before the Admission Committee. Clause 16 only provides that the original of those documents are to be produced before the Admission Committee, attested copies of which already form part of the application. Clause 16 only emphasises that the Admission Committee must at that time have before it the original certificates to finalise the admission, not that it can be permitted under that

clause to substitute the certificates which come later by improvement of qualifying marks.

5. With regard to the language in Cl. 15 the respondents are again under a misapprehension. True that the admission has to be made at the time of interview but that language is assertive to the effect that no subsequent change in the College/Discipline will be allowed. It only emphasises that the admission in any College or Discipline shall be made there and then and no further change will be permitted. Nothing can be allowed to be read into this principle that the certificate which comes by means of improvement of qualification shall in substitution be considered at the time of admission. The venture of the respondents to unsettle the settled state of affairs is totally understandable.

6. Since we are about to conclude our judgment, we need to focuss at this stage that this Court was in seisin of C. W.P. No. 6755 of 1989 with effect from May 20, 1989 till August 16, 1989, and the admissions already got delayed on account of the pending litigation. The brochure specifically provided that interviews of the candidates shall be around third or fourth week of July 1989. That time schedule was not adhered to, presumably on account of the pending litigation. Had there been no litigation and had that time schedule been observed, the question of any improvement in qualifying marks would not have arisen. We have noted earlier that the improved marks came by as a result declared on August 26, 1989, and the examination itself, which was the basis thereof, was held on July 26, 1989, at about a time when, as originally scheduled, the interviews would have been over. Thus, we reaffirmedly hold that the improvement of marks in the qualifying examination, whether of the Haryana Board or the Central Board, are totally outside the scope of the brochure for admission. The attempt of the respondents in that regard is futile and we declare it so.

7. In passing, Mr. S.C. Mohunta, learned counsel for respondents Nos. 3 and 5, said that two subordinate Courts have taken two contradictory views with regard to the efficacy of the improved qualifying marks in two suits which are pending in the Courts below and that a direction be also issued, clarifying the same. We have clarified the position of law. On the strength thereof, any party interested can have those orders modified from the respective Courts, interim as they are.

8. As a result of the foregoing discussion, we allow the writ petition and clarify that the qualifying examination, on the strength of which each candidate claimed admission, as valid as on June 26, 1989, subject to the exceptions that it was re-evaluated or rectified up-till the time of the date of interview, shall be the valid criterion for admission, and no improvement of qualifying marks accomplished after June 26, 1989, shall be taken into account for finalising the admissions. We order accordingly. No costs. Let the admissions be hurried up. We do hope there is no litigation again, at least in this academic session in this regard.

9. Petition allowed.