

(1973) 05 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 173 of 1972

Praveen Kumar

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-05-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 226, 29(2)

Citation : (1973) 2 ILR HP 364

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General and Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The Petitioner, Praveen Kumar Jain, applied under Article 226 of the Constitution against an order denying him admission to the Himachal Pradesh Medical College.

2. The Petitioner was born on April 28, 1953, at Nalagarh and has been residing there ever since. On the re-organisation of Punjab on November 1, 1966, Nalagarh was transferred to the Union territory of Himachal Pradesh. It now forms part of the State of Himachal Pradesh. The Petitioner studied at Government School, Nalagarh, and in 1969, he passed the Matriculation Examination held by the Punjab University. The Himachal Pradesh University had not yet come into existence. The Petitioner joined the D.A.V. College, Jullundur, in April, 1970. He appeared in the Pre-Medical Examination of the year 1971, but was unable to take two of the papers. He did not qualify at the examination. Thereafter he appeared at the Pre-Medical Examination of 1972. That examination was conducted by the Guru Nanak University, because meanwhile the D.A.V. College, Jullundur had come to be affiliated to that University. He obtained 437 out of 650 marks and passed the examination in the first division.

3. In July, 1972, an advertisement was published in the newspapers intimating that students desirous of seeking admission to the Himachal Pradesh Medical College should submit their applications by August 30, 1972, after obtaining a copy of the prospectus from the Principal of the Medical College. The Petitioner says that he obtained the prospectus and thereafter, submitted an application form duly completed on August 22, 1972, which was received the next day by the Principal of the Medical College. The Medical College did not publish the names of all the candidates selected for admission in a single list but successive lists were published from time to time showing the names of the candidates selected for admission. The Petitioner came to know that he had not been selected for admission, and that it was on the ground that he had passed the Pre-Medical Examination held by the Guru Nanak University in the second attempt. This was confirmed, the Petitioner says, by information received from the authorities of the Medical College. The Petitioner alleges that one Deepak Bandhu obtained a lower percentage of marks than he, and has been admitted. The case of the Petitioner is that but for the rule disqualifying candidates who had passed the Pre-Medical Examination from a foreign University in the second attempt he would be entitled to admission. The Petitioner also contends that such a rule was not incorporated in the prospectus pertaining to the year 1972, and for that reason the rule cannot be enforced.

4. The conditions of eligibility for admission to the Himachal Pradesh Medical College are set out in the prospectus, and one of the qualifying requisites is:

2. He/She has duly qualified in any of the examinations-

F.Sc. (Medical Group) or Pre-Medical or equivalent examination as recognised by the Himachal Pradesh University in second division which for this purpose will be 50 per cent of total marks obtained in compulsory subjects viz., English, Physics, Chemistry (including Organic Chemistry) and Biology only, of the qualifying examination after deducting the marks, if any, obtained in the optional subjects.

There is a list of the Universities whose certificates have been recognised for admission to the M.B.B.S. class of the Himachal Pradesh Medical College. The recital at the head of the list declares.

The following certificates of other Universities have been recognised as equivalent to the Pre-Medical certificate of this University subject to fulfilment of other conditions laid down by the regulations such as 50 per cent marks in the aggregate as also having passed the Pre-Medical or its equivalent examination at the first attempt.

The list of such Universities includes the Guru Nanak University.

5. Admittedly, the Petitioner passed the Pre-Medical Examination at the second attempt, and that was an examination held by the Guru Nanak University. The Petitioner contends that an invidious discrimination is brought about between candidates passing the Pre-Medical Examination from the Himachal Pradesh

University at the second attempt and candidates passing the examination from other Universities similarly at the second attempt. While the former are eligible for admission to the Himachal Pradesh Medical College, the latter are not. The submission is that the provision making such candidates from other Universities ineligible violates Article 14 of the Constitution. In my opinion, the contention has force and must be accepted. Once it is decided by the Himachal Pradesh Medical College to recognise the certificates of certain Universities as equivalent to the Pre-Medical certificate of the Himachal Pradesh University, there is no room for making any distinction between candidates from one University and (another with reference to the consideration whether the examination has been passed in the first or second "attempt. The recognition of a certificate of another University for the purposes of admission to the Himachal Pradesh Medical College would depend upon the standard of the Pre-Medical Examination of that University as compared with that of the examination of the Himachal Pradesh University. It is open to the Himachal Pradesh Medical College to refuse to recognise a certificate granted by the Guru Nanak University. If attention is directed merely to the certificates, then it is clear that upon recognition one certificate is as good as the other for the purpose of admission. But thereafter when the focus of attention shifts to a comparison between candidates I find it difficult to accept as valid the distinction that !a candidate passing the Pre-Medical Examination from the Himachal Pradesh University at the second attempt should be preferred to a candidate passing the examination from another University at the second attempt. In their return the Respondents attempt to justify the discrimination saying:

What examination would be recognised by any University in the light of various factors is the inherent right of the University concerned. If certain examinations are not recognised by the University it does not; amount to the denial of fundamental rights or of any discrimination.

The averment, it will be noted, refers to the recognition of the examination of a particular University and not to the candidate having passed the examination from that University at the second attempt. The explanation attempted by the Respondents is insufficient. The impugned rule directs itself to the quality of the candidate, and proceeds beyond considerations pertaining to the Pre-Medical Examination of the particular University. Having accepted the certificate granted by certain Universities as equivalent to the certificate of the Himachal Pradesh University, there is no warrant for making that equation subject to a further condition which creates discrimination against candidates from other Universities. A distinction which is related to the attempt at which a candidate passes the examination of other Universities seems to me entirely artificial and unwarranted. The classification attempted is unreasonable and bears no relation to the object underlying admission to the Medical College.

6. It is contended on behalf of the Himachal Pradesh University that the fundamental rights which can be made the basis of relief are those mentioned in

Article 15 and Article 29(2) of the Constitution and, it is urged, the impugned rule is protected from the position of those fundamental rights by Article 15(4) of the Constitution. A plain reading of the provisions of Article 15 shows clearly that the discrimination complained of by the Petitioner in the present case does not fall within that Article. There is no question here of the Petitioner being denied admission on the ground either of religion, race, caste, sex or place of birth. Nor does Article 29(2) come into play. Article 29(2) declares that no citizen shall be "denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds either of religion, race, caste, language, or any of them. It is, therefore, difficult to see how Article 15(4) can be invoked against the Petitioner. The State may make special provision for the advancement of any "socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes, but it is not possible to accept that the impugned rule is a provision of that nature. It is said that the people of Himachal Pradesh constitute a socially and educationally backward class of citizens, and that circumstance, it is contended, provides justification for the impugned rule. I have been referred to *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, , *N. Vasundara Vs. State of Mysore and Another*, , and *Km. Manju and Another Vs. State*, . In my opinion, the contention is unsound. There is no rational relationship between the restriction imposed by the impugned rule and the object on which reliance is placed. The object is served truly by reserving a number of seats in the Medical College for those belonging to Himachal Pradesh, and not by a provision such as the impugned rule. Indeed, it appears that ample provision has been made already in the prospectus reserving seats for those belonging to Himachal Pradesh.

7. In my opinion, the provision disqualifying the Petitioner from admission to the Himachal Pradesh Medical College on the ground that he passed the Pre-Medical Examination of the Guru Nanak University at the second attempt, violates Article 14 of the Constitution and is, therefore, void.

8. In the circumstances, it is not necessary to consider the further contention of the Petitioner that the impugned rule was not part of the prospectus and, therefore, could not be employed as a ground for denying him admission.

9. The writ petition is allowed. The Himachal Pradesh Medical College is directed to reconsider the application of the Petitioner for admission thereto and upon such consideration it will not deny him admission on the ground that he passed the Pre-Medical Examination of the Guru Nanak University at the second attempt. The Petitioner is entitled to his costs, which I assess at Rs. 150.