
(2015) 11 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : CWP Nos. 16432 and 22057 of 2015

Vinay and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Dentists Act, 1948 — Section 16A

Citation : (2015) 11 P&H CK 0134

Hon'ble Judges : Gurmeet Singh Sandhawalia, J.

Bench : Single Bench

Advocate : Arihant Jain, Advocate, for the Appellant; Pankaj Mulwani, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Gurmeet Singh Sandhawalia, J.—The present judgment shall dispose of two writ petitions i.e. CWP Nos. 16432 and 22057 of 2015. The facts are being taken from CWP No. 16432 of 2015.

2. The petitioners who are students of respondents No. 4 and 5-institute challenge the notice (Annexure P-6), whereby the admissions has been cancelled on account of the orders passed by this Court in LPA No. 255 LPA-2 dated 06.07.2015.

3. It is pertinent to mention that the reference therein is wrongly given. It should be LPA No. 919 of 2015 titled as "Aditi Sharma and others v. State of Punjab and others" (Annexure P-5), since the certified copy of that judgment was forwarded vide Sr. No. 255 on 06.07.2015.

4. The Division Bench of this Court in that case upheld the judgment of the learned Single Judge in CWP No. 6549 of 2015 titled as "Jaspreet Singh Cheema and others v. State of Punjab and others" decided on 15.06.2015, wherein the challenge raised to letter dated 13.02.2015 issued by the Baba Farid University to regularize the admission of the petitioner in Bachelor Dental Surgery (BDS) for

the session 2014-15 was rejected. Vide the said letter, the University was asking the colleges to ensure that admission in the said course was only given on the strength of the merit obtained in the entrance test, since the institutes had admitted students on the basis of marks obtained in the qualifying exam of 10+2 Class. It was, accordingly, held that the prospectus and the notification dated 07.03.2014 and the regulations of the Dental Council had been violated and the admissions should not be regularized. The relevant observations read as under: -

"Admittedly, the private institutions offered admission to the petitioners by way of advertisements in the newspaper only on the basis of marks obtained in the qualifying exam of 10+2 (PCB) though respondent No. 1, vide its letter dated 22.09.2014, followed by a public notice dated 28.09.2014, not only informed the University but also the private institutions about its decision that the admission given on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) would not be accorded recognition. It also informed vide letter dated 01.10.2014, addressed to all the private institutions affiliated with the respondent No. 2-University, that they should not send the admission return of those students who have been admitted otherwise than the merit of AIPMT-2014 and Special Test conducted by the University, but still the admissions were made by the private institutions on their own, of the present petitioners, on the pretext that the admission are being made on the basis of marks of qualifying exam of 10+2 (PCB) in the neighbouring States of Haryana, Himachal Pradesh, Uttar Pradesh and the State of Tamilnadu etc. and also on the ground that the procedure of giving admission to the BDS course on the basis of the marks obtained in the qualifying exam of 10+2 has been continued from 2008 to 2013 and has also been followed in 2015 by the State of Punjab itself.

As a matter of fact, the recognition of a Dental course is by the Dental Council of India (DCI) who had issued the notification dated 25.07.2007, notifying the Dental Council of India Revised BDS Course Regulations, 2007, in which it was categorically provided that wherever there are more than one University Board/Examining Body conducting the qualifying examination, the competitive examination would be the only mode for making admission to the BDS course. Later on, vide its letter dated 07.05.2015, the DCI has further clarified that the competitive examination is mandatory for admission in the BDS course and if it is not strictly followed, then necessary action will be taken under Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948.

As regards Clause 4 of the notification dated 30.03.2015 is concerned, there is a specific letter of the Medical Council of India dated 06.05.2015 in which it has been observed that the admission to the BDS course on the basis of the marks obtained in the competitive exams is mandatory as per Clause 5(2) of the Graduate Medical Education Regulations, 1997 and in case any admission is made contrary to the norms laid down in those Regulations, the qualification awarded to such person cannot be considered as a recognized medical qualification under the Indian Medical Council Act, 1956, and he may not be

granted registration by any State Medical Council.

All these facts are sufficient to show that the private institutions, while granting admission to the petitioners, have violated not only the prospectus and the notification dated 07.03.2014 but also the Regulations of the Dental Council of India and the Medical Council of India dated 25.07.2007, 07.05.2015 and 06.05.2015, which are reproduced elaborately in the earlier part of this judgment."

5. While disposing of the writ petition, the argument raised that 43 students had also been admitted by the private university, namely, respondent No. 4 was also repelled and a direction was issued that the admission of the said students would also be de-regularized and de-recognized. The petitioners belong to that category.

6. As noticed, the said issue has further been upheld by the Division Bench of this Court on 02.07.2015 in LPA No. 919 of 2015 titled as "Aditi Sharma & others (supra) in view of which the impugned order has been passed. It is not disputed that the order passed by the Division Bench has further been upheld by the Apex Court in Special Leave to Appeal (C) No. 17903 of 2015 decided on 08.07.2015.

7. The petitioners, thus, are aggrieved on the ground that they were not issued any notice and not subject matter of the litigation, but their admission has also been cancelled. The said submission is without any basis. The petitioners as well as respondent-institute is as much bound by the notification and the prospectus of the State and by the regulations of the Dental Council of India. Once the notice itself prescribed that only the candidates who had sat in the AIPMT and had duly qualified were eligible for admission, they cannot turn around and say that the admission given to them by the respondent-University was justified.

8. The Apex Court in *Central Airmen Selection Board v. Surender Kumar Das* 2003 (1) SCC 152 has also held that, where a person seeks admission is well aware of the terms and conditions cannot thereafter fall back on the principle of promissory estoppel. The relevant portion read as under:--

"It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed

that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court was clearly erred in law in invoking the said principle in the facts of this case. The judgement and order of the High Court therefore cannot be sustained."

9. The petitioners were seeking admission on the strength of the notification and prospectus and once it was provided that only those who had sat in the examination of Combined Entrance Test and were eligible having obtained 50% of the marks, the admission could not have been made on the strength of marks obtained in 10+2. It is the settled principle of law that the terms and conditions of the prospectus have the force of law and the admission made by the private respondents, thus, cannot be justified.

10. The petitioners being aware of the terms of the notification and the prospectus now cannot turn around and say that having taken admission and studied for a year they have altered their position. The notification dated 07.03.2014 also included respondents No. 4 and 5-institutions. Once the petitioners have not qualified the basic eligibility criteria, there can be no sympathy with them.

11. It has been held by the Apex Court in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, that the University cannot be directed to disobey the statute to which it owes existence. The petitioners are thus bound by the terms of the notification and, therefore, the observations made above would apply. Similarly the Apex Court in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, , held that lack of discipline was leading to serious impasse in academic life. Similarly, the Apex Court in *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*, held that condoning lapses and overlooking legal requirements on the question of sympathy was not permissible.

12. The Apex Court in "*Mahatma Gandhi University and another v. Gis Jose and others*", 2009 (1) RSJ 438 held that once the basic qualification is missing, there could be no misplaced sympathy.

13. Recently, the Apex Court in *Priyadarshini College of Computer Science and Another Vs. Manish Kumar and Others*, held that every candidate is required to go through the terms of advertisement thoroughly failing which he/she cannot claim any benefit for his/her own wrong. The relevant observations read thus:--

"10. It has to be kept in mind that every candidate applying for a particular course in any College is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong."

14. Thus, keeping in view the settled position, this Court is of the opinion that in the absence of the basic requirement, the decision of the University cannot be faulted with. If the plea of the petitioner is to be accepted, then admissions of all such ineligible candidates will have to be accepted amounting to persons who do not have the basic qualifying skills to get higher degrees and colleges would get licenses to violate such mandatory eligibility conditions for financial gains and only would amount to lowering the academic standards.

15. It is also not disputed that amongst the list of colleges, the respondent No. 4 was also in the list as per notification and well aware of the notice. Admission has been made in spite of that, of students who are not qualified and in the absence of 10+2 students from other States who had qualified in AIPMET-2014 as provided in the prospectus.

16. In such circumstances, there is no scope for interference in the notice which has been issued cancelling the admission of the petitioners which is against the regulations of the Dental Council of India, which has already been noticed in detail by the learned Single Judge in Jaspreet Singh Cheema's case (supra).

17. The petitioners will also be entitled for the similar relief of refund of fees and a sum of Rs. 50,000/- as interim compensation and of liberty to avail of their civil and criminal rights against the respondent-institute as per orders in the LPA No. 919 of 2015 (supra).

18. With the abovesaid observations, the present writ petitions are dismissed.