
(2000) 08 P&H CK 0223
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3430 of 2000

Vishal Brar

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 08 P&H CK 0223

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

Bench : Single Bench

Advocate : Mr. O.P. Garg, for the Appellant; Mr. Gurveen H. Singh, AAG, Dr. M.S. Rahi, Mr. Gopal Mahajan and Mukand Gupta, for the Respondent

Judgement

R.L. Anand, J.—When there is direct conflict between two prospectuses : One issued by the University for undertaking the Punjab Medical Entrance Test for admission to M.B.B.S./B.D.S./B.A.M.S. (Ayur-vedacharya) Courses in the Medical/Dental/Ayur-vedic Colleges of Punjab and the one on the basis of which the student was given the admission, which prospectus is to prevail, is the only point for determination in the present petition filed by Shri Vishal Brar who has prayed for the quashment of the action of respondent No. 3 i.e. Shri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar for allotting the paid seat to the petitioner. According to the petitioner, this action on the part of respondent No. 3 is arbitrary and illegal and directions should be given to respondent No. 3 to treat the petitioner as against a free seat and not against a paid seat and to refund the excess fee charged from the petitioner.

2. Brief facts of the case are that petitioner was aspirant for the course of M.B.B.S. He applied for Combined Medical Entrance Test 1998-99 to be conducted by respondent No. 2, Punjabi University on behalf of the respondent No. 1 i.e. the State of Punjab, on 6.6.1995. The petitioner obtained 570 marks in the entrance test and his rank in the PMT was 436. According to the petitioner, the number of seats available in MBBS 1st year in the institution of respondent

No. 3 as per paragraph 6 of the Prospectus of the University, was 50.50% seats are to be reserved as free seats, 35% seats are to be treated as paid seats and 15% seats are meant for NRI candidates. The distribution of free seats for general category comes to 18 and 7 seats go to SC/Scheduled Tribes. 17 are paid seats and 8 seats go to NRI quota. The sole grouse of the petitioner is that he was entitled to free seat as per the above calculations, whereas, he was given paid seat, the fee of which is much more as against a free seat. He had to accept the paid seat under compulsion. The petitioner further alleges that there were 13 free seats for general category. The petitioner appeared for interview for general merit seat in MBBS 1st Year general category on 23.10.1998 and his name figured at serial No. 19. The petitioner came to know that respondent No. 3 had filled the seats No. 14 to 18 by treating the same meant for rural category which is in violation of PMT prospectus 1998-99 issued by the University. The petitioner appeared for interview for paid seat on 24.10.1998. He made the payment for paid seat but when he came to know that he was entitled to free seat, he made a representation before respondent No. 3 on 18.12.1998. He also sent the reminder but to no effect. In short, the grouse of the petitioner is that he was entitled to free seat and not against the paid seat and the action of the respondent No. 3 in treating him against a paid seat, is illegal and violative.

3. Notice of the writ petition was given to the respondents. According to respondent No. 3, there were 50 seats available in MBBS 1st year course. 25 seats were free seats, out of which 13 seats were to go to general category and 12 seats were to go to rural candidates. In the paid category 7 seats were to go to general category, 6 to rural category, 4 to donors body seat and 8 to NRI/NRI sponsored. According to this respondent, the name of the petitioner stood at serial No. 19 and still he does not get the seat. It was admitted that two candidates figuring at serial Nos. 1 and 3 did not join the 1st year M.B.B.S. Course and as a result of that two seats fell vacant in category-1, two candidates figuring at Serial Nos. 14 and 15 became eligible to be selected for free seats and they were selected. The name of the petitioner was at serial No. 19. Even if the candidate figuring at Serial No. 17 did not join the course, even then the petitioner is not eligible to be elected for the free seat. According to the respondent No. 3, the admission has been made as per the prospectus of the institution. The petitioner is not entitled to free seat as there were only 13 seats in that category. The petitioner was selected in the category of paid seat and therefore, he paid the fees. The petitioner is not entitled to be admitted against the free seat at all. This is the broad defence taken up by respondent No. 3.

4. As I have stated above at the first outset, short point for determination in this writ petition is that when two prospectuses are under conflict which prospectus is to prevail.

5. In this case the dispute is with regard to the distribution of the seats, by respondent No. 3 i.e. Shri Guru Ram Dass Institute of Medical and Research, Amritsar. It is the common case of the parties that there are 50 seats for MBBS

course. The Punjabi University, Patiala took the Punjab Medical Entrance Test for 1998-99 and issued the prospectus and according to this prospectus 50% seats are reserved as free seats, 35% as paid seats and 15% seats for NRI candidates in all private Medical/Dental and Ayurvedic colleges, in the State of Punjab. Further there is a reservation indicated in the prospectus itself. According to that, 25% seats will go to Scheduled Castes/Scheduled Tribes and 5% will go to Backward Classes. Out of 25 seats of general category, under the free seats, 18 will go to General category, 6 will go to Scheduled/Castes and one will go to Backward Classes. Guru Ram pass Institute of Medical Sciences and Research also issued the prospectus for MBBS Course for 1998-99. They have distributed the seats in different manner. Against 25 category-I merit seats, 13 seats were allotted for general category and 12 seats were allotted for rural category. In category-II i.e. payment seats, the total number of seats are 25, out of which, 7 seats were allotted for general category, 6 for rural category and 4 for donors body seats and 8 for NRI/NRI sponsored seats. Thus, the above would show that the institution has made a provision for rural seats both in Category-I and Category-II but there is no such provision in the prospectus of the University.

6. Learned counsel for the petitioner submitted that the division of seats made by respondent No. 3 is not binding upon the candidates, who are bound by the prospectus of the University and this prospectus is to prevail upon the prospectus and admission forms issued by the College. The petitioner appeared in PMT test, under the prospectus issued by the University which took the test for all private medical colleges. Any condition in the prospectus of respondent No. 3, which is contrary to the prospectus of the University, is not binding, rather, the terms and conditions of the prospectus of the University, are binding on all concerned in the matter of granting admissions.

7. Learned counsel for the petitioner invites my attention to a decision of this Court dated 22.1.1999, passed in C.W.P. No. 13840 of 1998 : 1999(2) SCT 594 (P&H) Jagjit Singh Sarao etc. v. Punjabi University and others, wherein, it was observed as follows :-

"Respondents 4 to 7 are private Dental Colleges in the State of Punjab and are governed by the provisions of the prospectus issued by the University. It is well settled that the terms and conditions notified in the prospectus issued by the University are binding on all concerned in the matter of granting admissions and these have the force of law and the respondents cannot be allowed to act in contravention thereof."

8. The ratio of the cited judgment is applicable to the facts in hand. The college-respondent No. 3 was duty bound to divide the seats in consonance with the terms and conditions of the prospectus issued by the University. Any deviation made by the college in its own prospectus is illegal and it does not bind the students. If the seats are calculated as per the prospectus of the University then there is no difficulty in holding that there were 18 free seats and not 13 seats as propounded by respondent No. 3. As per Annexure P-3, the name of the

petitioner comes at Serial No. 19. 4 candidates namely Upinder Singh, Divya Dharwal, Payal and Vishal Popli, have joined somewhere else. In this manner, the name of the petitioner who was at serial No. 19 comes within the first 18 and he was thus, entitled to the free seat.

9. Faced with this difficulty, the counsel for the respondent No. 3 submitted that now at this juncture, it is not open to the petitioner to show that he is entitled to free seat when he has already made the payment against the paid seat. It was also submitted that respondent No. 3 institution is a rural institution and there is no wrong if a bifurcation has been made in the prospectus of respondent No. 3 with regard to the rural seats.

10. I do not subscribe to the argument raised by the learned counsel for respondent No. 3. If respondent No. 3 had to make any provision for rural candidates, it must intimate to the University which can in turn incorporate the provisions in the prospectus issued by it. Unilaterally amendment by respondent No. 3 cannot supersede the prospectus issued by the University. The petitioner in this case is not estopped from filing the writ petition by making the payment for paid seat because the petitioner had to make the payment under duress. Immediately, after making the payment, the petitioner made a representation that he was entitled to a free seat. If under the threat of removal from college the petitioner made the payment meant for paid seat, it is always open to him to show that he was not liable to pay for paid seat. In this case, the petitioner made a representation to the authorities on 18.12.1998 stating therein that he was not considered for free seat. The representation is in Annexure P-6 on the record. So much so a reminder was issued on 6.11.1999.

11. The learned counsel for the respondent also relied upon a judgment reported as 1999(1) SCT 255, Medical Entrance Problem, Redressal Forum v. State of Punjab. This judgment rather, in my opinion, goes against the respondent. This judgment lays down that prospectus has a force of law and the candidate has the right to seek the admission on its basis alone and the conditions stipulated therein cannot be changed to the detriment of any other candidate. The petitioner appeared in the entrance test, under the prospectus issued by the University and, therefore, this prospectus is binding both on the petitioner as well as on respondent No. 3.

12. In this view of the matter, it is hereby held that action of respondent No. 3 in charging fee from the petitioner against a paid seat, is illegal and unwarranted and respondent No. 3 is liable to refund the excess amount to the petitioner who was always entitled to have the free seat.

13. Resultantly, the present petition is allowed and the action of respondent No. 3 for allotting the paid seat to the petitioner is held to be illegal and arbitrary and directions are given to respondent No. 3 authorities to treat the petitioner against a free seat and further to refund the excess amount charged from the petitioner against the paid seat. The needful shall be done by the respondent

No. 3, within one month from the receipt of the copy of this order, failing which, the petitioner shall be entitled to interest on the excess amount at the rate of 12% per annum. There shall be no order as to costs.

14. Petition allowed.