

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.17587 of 2015(O&M)
Decided on : 29.09.2015**

Jaspreet Kaur

... Petitioner

Versus

U.T.Chandigarh & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Rajiv Kataria , Advocate, for the petitioner.

Mr.Sanjeev Sharma, Sr.Advocate
with Mr.Vishal Sodhi, Advocate, for the respondents.

G.S. Sandhawalia , J. (Oral)

Challenge in the present writ petition is for declaring condition A-3, regarding the eligibility criteria and the admission procedure for the 77 U.T. Chandigarh Pool seats in the MBBS course of respondent No.4, for the session 2015 as *ultra vires*. Further challenge has been raised to the office orders dated 25.06.2003 (Annexure P12) and 16.03.2010 (Annexure P13) wherein decision was taken that the students who passed the qualifying examination of 12th standard from U.T., Chandigarh, would be eligible for the 85% quota of the U.T. Pool seats. Resultantly, the requirement of sitting for 2 years was removed and only the requirement was for +2. Relevant clause reads as under:

“A-3): Eligibility Criteria and admission procedure for 77

UT Chandigarh Pool seats:

(General Category, SC Category, Physical Disability Category)

1. The candidate must fulfill relevant General Eligibility Criteria (Page 6-10)

2. Only those candidates whose names appear in the AIPMT-2015 state level rank list of successful candidates for the State of Chandigarh, prepared by CBSE, will be eligible for admission against UT Chandigarh Pool seats.

3. The candidates should have passed 12th standard examination (qualifying examination) from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college. This condition is waived off in respect of wards of serving defense personnel/ex-servicemen vide letter no.19/1/3-IH(3)-2007/18322 dated 14.09.2007. However, the name of such applicants, claiming exemption of +2 from Schools in Chandigarh, should have appeared in the AIPMT 2015 state level rank list of successful candidates for the State of Chandigarh.”

The pleaded case of the petitioner is that she studied from lower KG to 10th class in Sacred Heart Senior Secondary School, Sector 26, Chandigarh and her father was posted as Personal Assistant with the faculty of Cyber Crime at Central Detective Training School, a Government of India undertaking. On account of the petitioner's mother working in Vivek High School, Sector 70, Mohali and the father having to travel, they had shifted to Mohali from the Government accommodation in Chandigarh and

the residence certificate in Chandigarh is annexed as Annexure P2, as proof. The petitioner joined Saint Annie's School at District Mohali, for the purposes of convenience. Resultantly, her 2 years of schooling was done from Mohali, Punjab. She passed her 10+2 in the year 2015 from the said school at Mohali and the Senior School Certificate Examination Certificate dated 25.05.2015 is attached as Annexure P5.

On account of her interest to join medical profession, she filled a form of All India Pre Medical Test, 2015 (for short, the 'AIPMT') on 05.12.2014 (Annexure P6), in which she gave the option for Chandigarh as the only State and in the examination, she got a rank of '60', against the Chandigarh category, as per the result dated 16.08.2015 (Annexure P7) and thus, as per Clause 2 of A-3, came within the zone of consideration on account of the 77 seats which were being offered by the respondent-College. On account of the prospectus issued which laid down the criteria under Clause A-3 that only the candidates who had passed the 12th standard examination (qualifying examination from schools/ colleges, Chandigarh), recognized by the Chandigarh Administration, as a regular student, were eligible, she was not being considered.

The defence of the Administration is that in view of the Division Bench judgment of this Court in CWP No.20636 of 2013

titled *Abheyjit Singh & another Vs. Chandigarh Administration, Chandigarh & others*, decided on 18.09.2013, the condition that the students who had done their 12th standard from the recognized school, was upheld. The petitioner having not passed her 12th standard from Chandigarh, was not entitled for admission.

Without going into the question of policy, as such, in the present case, this Court is of the opinion that the petitioner is entitled for admission on the principle of promissory estoppel and in view of the maxim "*actus curiae neminem gravabit*" which means that no act of the Court shall prejudice a man.

It is not disputed that the policy of 10+2 was a subject matter of challenge before this Court in CWP No.12155 of 2014 titled *Ms. Akanksha Mehra Vs. Secretary, Department of Medical Education & Research, Chandigarh Administration & others*, decided on 16.09.2014 (Annexure P10), wherein this Court had struck down the policy prospectively, on the ground that it was wholly arbitrary and that the passing of 12th standard requirement from Chandigarh was not a valid criteria. At that time, the petitioner filled in her preference for Chandigarh in the prospectus for the AIPMT, 2015 on 05.12.2014. The judgment of the Learned Single Judge had not been stayed and it is on that basis, she had applied, at that point of time. Because the policy itself had been struck down and an appeal was preferred against the said decision

by the Administration bearing LPA No.129 of 2015, only in the year 2015, the stay was granted by the Division Bench on 03.03.2015. By that time, the petitioner had already altered her position and applied for admission on the strength of the 10+2 policy, which stood struck down by this Court and therefore, on the basis of the legitimate expectation, sought to take admission on account of the non-existing bar, at that point of time.

Eventually the Letters Patents Appeal was disposed of as having been rendered infructuous, on account of the fact that counsel for the respondent-Ms.Akanksha Mehra, in that case, made a statement that the said student was not seeking admission in the respondent-college. Relevant portion of the Division Bench judgment dated 24.08.2015, noting the concession of the counsel for the said candidate reads as under:

“According to learned counsel appearing for the respondent Ms. Akanksha Mehra, the letter patents appeal has in fact become infructuous as the respondent is not now seeking admission in the Medical College in Chandigarh or taking any benefit on the basis of the impugned judgment dated 16.9.2014 passed by the learned Single Judge of this Court.”

In such circumstances, the Letters Patents Bench did not decide the issue on merits and left it open for this Court to examine, since it was brought to the notice of the Division Bench that the present matter was again pending before this Court.

In such circumstances, once the petitioner had altered

her position and would be seriously prejudiced, this Court is of the opinion that in view of the peculiar facts and circumstances, she is held entitled for admission in the respondent-college, on account of her right, at that point of time, she had applied. The Apex Court in **South Eastern Coal Fields Limited Vs. State of M.P. 2003(8) SCC 648** while elaborating on the principle of the maxim "*actus curiae neminem gravabit*" observed that if there is any injury to any person, the same has to be undone. The relevant portion reads as under:-

"That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The *quantum* of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not

intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a *prima facie* case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation.”

The effect of use of legal maxims as guiding principles has been accepted by the Apex Court in **Bharat Damodar Kale & another Vs. State of Andhra Pradesh 2003 (8) SCC 559** and **Japani Sahoo Vs. Chandra Sekhar Mohanty AIR 2007 SC 2762,**

which was further approved by the Constitutional Bench in **Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director 2014 (2) SCC 62.** The relevant observation reads as under:

“14. It is true that in Bharat Kale and Japani Sahoo this Court has referred to two important legal maxims. We may add that in Vanka Radhamanohari, to which our attention has been drawn by the counsel, it is stated that the general rule of limitation is based on Latin maxim ‘vigilantibus et non dormientibus, jura subveniunt’, which means the vigilant and not the sleepy, are assisted by laws. We are, however, unable to accept the submission that reliance placed on legal maxims was improper.

We are mindful of the fact that legal maxims are not mandatory rules but their importance as guiding principles can hardly be underestimated. Herbert Broom in the preface to the First Edition of his classical work “Legal Maxims” (as seen in Broom’s Legal Maxims, Tenth Edition, 1939) stated:

“In the Legal Science, perhaps more frequently than in any other, reference must be made to the first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such maxims, many of which obtained in the Roman law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social

intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reason and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves.

In our opinion, therefore, use of legal maxims as guiding principles in Bharat Kale and Japani Sahoo is perfectly justified.”

It is not denied that on account of her merit, she is very much within the zone of consideration and it is only on account of her ineligibility due to the fact that she had not studied from Chandigarh in the 12th standard examination, her case is not being considered by the respondents.

Accordingly, the present writ petition is allowed. All the interim orders passed by this Court are hereby confirmed. The petitioner will be entitled for admission, as Mr.Vishal Sodhi, counsel for the respondents, has taken instructions from Mr.Yadvinder Singh, Law Officer of the respondent-college that there is availability of a seat in the 85% category out of 77 seats. It is also to be noticed that this Court has already directed on 08.09.2015 that the respondents will permit the petitioner to take part in the counselling on the strength of her ranking in the AIPMT

result which was slated for 11.09.2015. The said order was further clarified on 09.09.2015, 15.09.2015 and 22.09.2015 and on the said date, the observation had been made that the admission will be subject to the final decision of the writ petition.

Keeping in view the fact that the petitioner has been held entitled for admission on the strength of the issue of estoppel and the maxim, "*actus curiae neminem gravabit*", counsel for the petitioner has also not pressed the challenge to the eligibility clause and therefore, this Court need not go into the issue whether the judgment in Abheyjit Singh's case (supra) would be applicable to the facts and circumstances. Since admission is to be finalized on 30.09.2015, Mr.Sodhi has assured this Court that he will inform the respondents, whose officials are also present in Court, to ensure that the petitioner is given admission even in the absence of the certified copy of this order. The admission will not be denied on account of the fact that the petitioner's original certificates, which she had submitted with the Medical College at Patiala, can not be produced on 30.09.2015 and the petitioner will be given another two weeks' time to produce the originals. In the meantime, the petitioner shall submit the attested copies of the certificates.

Writ petition stands allowed with the above-said observations.

SEPTEMBER 29, 2015
sailesh

(G.S. SANDHAWALIA)
JUDGE