

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18194 of 2015

Harmandeep Singh Brar

....Petitioner(s)

Versus

Union of India & others

...Respondent(s)

CWP No. 11586 of 2015

Avneet Madan

....Petitioner(s)

Versus

Union of India & others

...Respondent(s)

Date of decision: 30.09.2015

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

Present: Mr.Gaurav Chopra, Advocate
and Mr.Parminder Singh Rai, Advocate, for the petitioner.

Mr.Brijeshwar Singh Kanwar, Advocate, for respondent No.1.

Mr.Arun Kumar Bakshi, Advocate, for respondent No.2.

Mr.Deepak Sharma, Advocate, for respondent No.3.

Mr.S.S.Chadha, Advocate, for respondent No.4.

G.S.SANDHAWALIA, J. (Oral)

CM No.12933 of 2015 in CWP No.18194 of 2015

Application for placing on record short reply/affidavit of respondent No.1, is allowed. Said document is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CWP Nos.11586 & 18194 of 2015

The present judgment shall dispose of CWP Nos.11586 & 18194 of 2015, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP No.18194 of 2015 titled *Harmandeep Singh Brar Vs. Union of India & others*.

The petitioner seeks a writ in the nature of mandamus, directing respondents No.1 to 3, to grant admission in the Bachelor of Architecture 5 years Degree Course, on the basis of his higher rank at No.61, in relation to respondent No.4, namely, Vaibhav Passi (rank No.68) and seeks provisional admission, on the ground that admission has already been granted to the said respondent in CWP No.22077 of 2014 and which was confirmed on 11.03.2015.

The petitioner's case is that the said respondent No.4 had filed the above-said writ petition. The said respondent had been granted provisional admission on 08.12.2014 who had a rank at Sr.No.68, lower than the petitioner and the petitioner had also been given the right of provisional admission on account of his higher rank. Order dated 08.12.2014 reads as under:

“The counsel for the University states it will have no difficulty in considering the petitioner's plea, for, it is pertaining to provisional admission now and they will file reply and the case could be decided on merits. Accordingly, the petitioner is granted provisional admission and if the 4th respondent is higher in rank of the petitioner, the 4th respondent may also be given a provisional admission, if he applies for such admission and this will not be taken as giving any special equities or vested rights to regularize that admission, if the respondent joins issues on the merits through reply. The provisional admission shall be given effect forthwith by issuing appropriate orders.

For reply, post on 05.01.2015.”

As per the information brochure, 40 seats had been allocated to the respondent No.3-College for the session 2014 onwards. Against the 40 seats allocated to the respondent-College, there were 5 seats for the states deficient in technical education, apart from one seat of wards of Kashmiri migrants. It is pertinent to mention that the admission was against the vacant seats lying with the respondent-College, at that point of time. In pursuance of the interim order, the petitioner deposited his fees on 12.12.2014 (Annexure P5) and respondent No.4 had also deposited the fees. It is pertinent to mention that the said respondent was

also pursuing his 1st semester course in another college at Amritsar.

On 30.01.2015 (Annexure P8), the respondent-College wrote to the petitioner that he had not attended the classes of the 1st semester and neither appeared for the examination, consequent to the interim order dated 08.12.2014 and classes had commenced for the 2nd semester from 19.01.2015. His ineligibility to join 2nd semester, was informed to him, in view of the regulation 3.1 at Page 580 of the Panjab University Calendar Vol II, 2007, which reads as under:

“A candidate shall be promoted from one semester to the next semester provided he qualifies in at least five subjects prescribed for the respective semester examination, fulfils the attendance and other requirements....”

However, the College also gave its no objection for considering his candidature for the 2nd semester at his own risk and responsibility, subject to the decision of the writ petition, filed by respondent No.4-Vaibhav Passi. Eventually, the writ petition was disposed of on 11.03.2015, on an undertaking given that the admission of the petitioner was to be regularized. Order dated 11.03.2015 reads as under:

“CM No.2864 of 2015

Written statement on behalf of respondent No.3 alongwith Annexure R-3/1 is taken on record, subject to all just exceptions.

Application stands disposed of.

CWP No.22077 of 2014

Counsel for respondent No.2-Punjab University states that the University has decided to regularize the admission of the petitioner.

In view of the statement made by the counsel for respondent No.2, the present writ petition has been rendered infructuous.

Disposed of as such.”

Thereafter, the Panjab University on 09.04.2015 (Annexure P9), wrote to the respondent-College that the petitioner was not eligible for admission, in view of the above reproduced regulation and admittedly, a copy of the same was

forwarded to the petitioner on 24.04.2015. It is not disputed that the petitioner only attended classes from 27.01.2015 of the 2nd semester till 25.04.2015.

A set of 6 petitions by 7 students were filed for admission against those 5 seats which had not been filled up for the states deficient in technical education. This Court, in the lead case, i.e., CWP No.20542 of 2014 titled *Naina Krishan Vs. Union of India & others*, on 01.07.2015, held that those said 5 seats could not be consumed by the General Category of the UT students and those seats could not be shifted to any other category. Naina Krishan, one of the writ petitioner who was at merit No.67, was, however, given admission and it was noticed that respondent No.4-Vaibhav Passi had already been granted admission on 11.03.2015, in CWP No.22077 of 2014. This Court recorded that one seat of the Kashmiri migrant and one of the General Category, which were vacant, would go to Naina Krishan and Vaibhav Passi-respondent No.4, who had already been adjusted on 11.03.2015. The other five writs concerning 6 students were, accordingly, dismissed on 01.07.2015 (Annexure R3/3).

The unsuccessful students filed LPA No.1339 of 2015 titled *Kanav Arora & Anmol Narad Vs. Panjab University & others*, LPA No.1371 of 2015 titled *Kunal Shangari Vs. Union of India & others* and LPA No.1372 of 2015 titled *Sukrti Bhutani Vs. Punjab University & others*. Another student, namely, Saksham Arora chose not to file an appeal whereas another one, namely, Hymanshoo Goel withdrew his appeal, bearing LPA No.1373 of 2015. Two of the appeals, bearing LPA Nos.1339 & 1371 of 2015 were allowed on 11.09.2015 and 3 students were adjusted by the Division Bench, keeping in mind the correspondence *inter se* the Administration and the Union of India, to the extent that those 5 seats, if not utilized by the states deficient in technical education, could be adjusted, on the ground that the said 5 seats reserved for deficient states, were over and above the 40 seats which had been sanctioned for the respondent-College and on account of

going vacant, the candidates could be adjusted in the order of merit. Anmol Narad (in LPA No.1339 of 2015) has been adjusted against a candidate who migrated, namely, Chaivi Saxena, vide order dated 11.09.2015. Sukriti Bhutani, appellant in LPA No.1372 of 2015, was adjusted by the Division Bench on 18.09.2015, in view of her merit. Resultantly, 2 seats are still vacant against the 5 seats.

It is not disputed that Avneet Madan (petitioner in CWP No.11586 of 2015), vide an order dated 01.06.2015, was allowed to sit in the examination, conducted by the respondent-College, for the 2nd semester, provisionally. It is further not disputed that the said respondent has been pursuing her studies from Chitkara College, Rajpura.

Counsel for the petitioners, thus, submit that the petitioners are entitled for the same treatment as the other writ petitioners who are given the benefit of admission by the Letters Patents Bench on 11.09.2015 and 18.09.2015, since there are still 2 vacant seats.

The said prayer has been strongly opposed by counsel for the respondent-University (in CWP No.18194 of 2015) on account of the fact that the petitioner has not attended the 1st semester classes and neither given the 2nd semester examination and thirdly, he approached this Court only on 31.08.2015 and had let the matter drift, after attending classes till 24.04.2015.

The objection raised by counsel for the University (in CWP No.18194 of 2015), is thus, a very valid objection. The relevant regulation has already been reproduced above. It is not disputed that though the petitioner had been granted provisional admission on 08.12.2014. However, when the writ petition was disposed of on 11.03.2015, in favour of respondent No.4-Vaibhav Passi, he never got any clarification from this Court that his admission also stood confirmed on the ground that he was higher in merit. Before that also, the College had written to him on 31.01.2015 (Annexure P8) that on account of the University regulations, he

was not eligible and it would be subject to the final decision of the writ petitioner, which he chose not to bring to the notice of this Court.

He neither filed Letters Patents Appeal against the final decision on 11.03.2015 and let the matter drift again. He had taken a calculated chance and chosen not to contest. Thereafter also, on 24.04.2015, he was informed by the College of the letter of the University dated 09.04.2015 that he was not eligible for the admission in the 2nd semester, in accordance with the regulations. Thereafter also, he chose not to take any action. Even now, in the writ petition, he has not raised any challenge to the letters dated 30.01.2015 and 09.04.2015 and it is apparent that he has just jumped on the bandwagon because of the writ petitions filed by the others and by Avneet Madan, who was careful of her rights and had approached this Court on 27.05.2015.

Even otherwise, she has been pursuing her studies in Chitkara College, Rajpura and therefore, would be entitled for the same benefit, as has been granted to the appellants in the Letters Patents Appeals. It is also to be noticed that the Division Bench has noticed in LPA No.1372 of 2015, in the case of Sukriti Bhutani that the appellant had taken admission and given her 1st semester examination from a private college and appeared in the 2nd semester examination of the respondent No.3-College and there was no hindrance in her continuing in her studies. The petitioner in CWP No.11586 of 2015 is also similarly situated, having studied in the Chitkara College at Rajpura.

In such circumstances, the petitioner-Harmandeep Singh Brar cannot claim parity to the others and his case is totally distinct. The regulation of the University stares in his face as he has not given his 1st and 2nd semester examination and therefore, no direction can be given to the University against its own regulations. A three Judges bench of the Apex Court held in **A.P.Christians Medical Educational Society v. Government of Andhra Pradesh and Another**

(1986)2 Supreme Court Cases 667 that the direction could not be issued to the University to do something which is not permissible under the University regulations. The relevant paragraph reads as under:

“10. Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical college established by the Daru-Salaam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salaam Medical College as a precedent in the present case to direct the University to do something which it is forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time

virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wakefully, issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the university and refrained from seeking admission to the institution. If some did not heed the warnings issued by the university, they are themselves to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the institutions, which have sprung out of the funds collected from the students, have been frozen. It is up to the State Government to devise suitable ways, legislative and administrative, to compensate the students at least monetarily. The appeal filed by the society is dismissed with costs which we quantify at Rs. 10,000. The writ petition filed by the students is dismissed but, in the circumstances, without costs.”

Accordingly, keeping in view the above facts and circumstances, CWP No.11586 of 2015 is allowed and Avneet Madan's provisional admission is confirmed and CWP No.18194 of 2015 is dismissed.

30.09.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE