

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

CWP No.18324 of 2015 (O&M)
Date of decision: September 01, 2015

Madan Lal Chaudhary

...Petitioner

Versus

Secretary, Department of Home Affairs,
UT, Chandigarh and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ravi Kant Sharma, Advocate
for the petitioner.

Mr.Vikas Chatrath, Advocate for
the respondents.

HARINDER SINGH SIDHU, J.

By filing this petition, the petitioner has sought directions to the respondents to issue a 'resident and occupation' certificate as per proforma Annexure P-3, so as to enable the son of the petitioner to get admission in the MBBS course in the Indira Gandhi Medical College, Shimla.

It is stated that the petitioner and his family members belong to Tehsil Jawali, District Kangra (Himachal Pradesh). For pursuing his avocation, the petitioner shifted to Chandigarh in the year 1990 and enrolled himself as an Advocate with the Bar Council of Punjab and Haryana and has been practicing at the District Courts, Chandigarh ever since. The son of the petitioner, namely Mr.Aman Chaudhary after passing his matriculation and senior

Secondary examination from DAV Public School, Sector-8-C, Chandigarh applied for common All India Pre-Medical Entrance Test for MBBS course held on 25.07.2015. He passed the said test. Being a bonafide resident of the State of Himachal Pradesh, the son of the petitioner applied for admission in MBBS Course in the said State. He was called for counseling on 27.8.2015 for admission to Indira Gandhi Medical College, Shimla (IGMC). The Admission/Counseling Committee for the academic session 2015-16 checked all his testimonials and other documents, which were found in order, except the 'resident and occupation certificate'. Resultantly, the admission of the son of the petitioner was withheld. On repeated requests and persuasions to the Admission Committee, a provisional seat in the MBBS course in OBC category was allotted to him with the condition that the certificate as prescribed in Appendix A-13 of the Prospectus be produced on or before 4.9.2015, failing which the claim will be forfeited (Annexure P-1).

The petitioner applied for issuance of the said certificate to the respondents through E-Samprak, Sector-17, Chandigarh on 19.8.2015 (Annexure P-2), wherein, he specifically mentioned that as per prospectus of H.P.University, the eligibility criteria for State Quota Seats is that the candidate must have passed at least two examinations out of Middle/Matric/10+1/10+2 from the recognized schools situated in the State of Himachal Pradesh, but this condition is exempted for the candidates who are bonafide Himachali and their parents are living outside Himachal Pradesh on account of their

service/posting/private occupation. However, such candidates have to furnish a certificate that their parents are living outside the State of Himachal Pradesh on account of service/private occupation/business issued by the Tehsildar/Sub-Divisional Magistrate of the area concerned as per prescribed format.

As the certificate in the prescribed format was not issued and the requirement of the certificate was urgent, the petitioner filed the present writ petition.

When the matter came up for hearing on 31.8.2015, on the asking of the Court Mr.Vikas Chatrath, accepted notice on behalf of the respondents. Keeping in view the urgency of the situation, the case was posted for 1.9.2015. The operative part of the order dated 31.08.2015 reads as under:

“Notice of motion.

Mr.Vikas Chatrath, Advocate, who is present in the Court accepts notice on behalf of the respondents. Learned counsel for the petitioner undertakes to supply four copies of the paper-book to learned counsel for the respondents.

List on 1.9.2015.

In the meantime, in view of the urgent need of the prescribed certificate (as Annexure P-3), let respondent no.3 consider the request of the petitioner expeditiously, and if there is no legal impediment, issue the same by tomorrow i.e. 1.9.2015, in accordance with law.”

In response to the above order, Sh.Vikas Chatrath, learned counsel for the respondents has placed on record a communication dated 31.8.2015 (Annexure R-1) from the Sub Divisional Magistrate (Central), U.T.,Chandigarh – respondent no.2 addressed to him, which reads as under:-

“This is to inform you that no such Certificate has

been issued by this office in the prescribed proforma as attached with your application as per APPENDIX-A-13. Moreover, the Residence Certificates are being issued by this office in the prescribed Proforma/format, which is notified by the Govt. of India, Chandigarh Administration. The photocopies of 10(Ten) Residence Certificates issued by this office, are enclosed.

However, to resolve the issues being faced by the applicant, the office of Sub Divisional Magistrate(Central) has offered to countersign his Occupation Certificate issued by the Bar Association.

It is pertinent to note that Residence Certificate by its very own definition implies that the Certifying Authority must certify only the residence of the applicant and not the occupation.

If any private/public/govt. University insists on certification of occupation, the same can be obtained from the concerned employer and if even that is acceptable to the University, then this grievance qua the private/public/govt. University must be agitated before the Competent Forum.”

I have heard Ld. Counsel for the parties.

The relevant provision IV(3)(iv) of the Prospectus as per which the certificate is required is reproduced below:

“IV. ELIGIBILITY AND QUALIFICATIONS

(A) For State Quota Seats :

1. Children of Bonafide Himachali/Himachal Govt. employees and employees of autonomous bodies wholly or partially financed by the Himachal Pradesh Government will only be eligible to apply for admission to MBBS/BDS Courses through Counselling on the basis of State merit of AIPMT-2014 in Government Medical/Dental Colleges including 50% State Quota seats in Private un-aided Dental Colleges situated in Himachal Pradesh. They should have passed at least two exams out of the following examinations from the recognized schools or colleges situated in the State of Himachal Pradesh and affiliated to ICSE/CBSE/H.P. Board of School Education or equivalent

Boards/Universities established by law in India.

- (a) Middle or equivalent*
- (b) Matric or equivalent*
- (c) 10+1 or equivalent*
- (d) 10+2 or equivalent*

2. The Bonafide Himachali students who are admitted to Navodya Schools situated in Himachal Pradesh and who have passed matric or +2 examinations under the exchange programme from other Navodya Schools in the Country shall also be eligible for admission to the above courses.

3. Following categories of candidates are exempted from the condition of passing the examinations from recognized schools affiliated to ICSE/CBSE/HP Board of School Education and situated within Himachal Pradesh provided that the candidates of these categories should be Bonafide Himachali and their parent are living outside Himachal Pradesh on account of their service/posting /private occupation. In such cases, non-schooling in Himachal Pradesh shall not debar them from competing against any of the seats whether reserved or otherwise (except backward area seats):-

- (i) Children of Defence Personnel/Ex-Servicemen*
- (ii) Children of serving /retired employees of Central Government/U.T./Other State Governments and Children of employees of the Autonomous Organizations/Semi Government Bodies of Central Government/U.T./Other State Governments.*
- (iii) Children of employees of Himachal Government/H.P. Govt. Undertaking/ Autonomous Bodies wholly owned by H.P. Government.*
- (iv) Children of employees of Private Sector / Private occupation.*

Note :(1) The candidates exemption for passing two

examination from the schools situated in Himachal Pradesh under the category (iv) mentioned above, should 14 have passed their schooling from the schools situated in the place /station where their parents are residing.

(2) The Candidates claiming exemption for passing two exams from H.P School(s) under the categories as mentioned in sub clauses (ii) & (iv) above of Clause 3 shall also submit a certificate on the prescribed format as given in the prospectus at **Appendix A-11, A-12, A-13 & A-14 with the application form in original**, as applicable.”

“APPENDIX-A-13

FORM OF CERTIFICATE TO BE SUBMITTED BY THE FATHER/MOTHER OF THE CANDIDATE WHO IS RESIDING OUT SIDE THE STATE OF HIMACHAL PRADESH ON ACCOUNT OF PRIVATE OCCUPATION

Certified that Shri/Smt.
 Father/Mother of Mr. /Ms. (Name of the candidate)
 is residing at (complete
 address)
 w.e.f. to or till
 date

It is further certified that Sh/ Smt.
 S/O /W/O
 is running private
 occupation i.e. at (complete
 address) w.e.f.
to or till date (struck out
 whichever not applicable)

Signature with seal of the Tehsildar/
 Sub Divisional Magistrate of the area concerned

Date
 Place”

Admittedly, the petitioner has already been issued a

resident certificate. The dispute is with regard to the issuance of occupation certificate. As per the letter of the Sub Divisional Magistrate (Annexure R-1), residence certificates are being issued by his office in the prescribed format notified by the Government of

India. The Residence Certificate by its very definition can only certify the residence of the applicant and not his occupation. However, to resolve the issue it has been offered that the office of Sub Divisional Magistrate (Central) would counter sign the Occupation Certificate issued by the Bar Association.

To my mind, the stand of the Sub Divisional Magistrate cannot be faulted. There can be any number of private occupations that a person may be engaged in. It may not be possible for the Sub Divisional Magistrate to certify regarding the same.

However, the present case is not of any private occupation. Here, the petitioner is a practising Advocate and in proof of the same he relies on the Identity Card issued by the Bar Council of Punjab and Haryana (Annexure P-5) and the certificate of the District Bar Association, Chandigarh (Annexure P-4) certifying that he is practising in the District Court, Chandigarh since 1990 and has also been allotted a Chamber in the District Courts Complex. The Sub Divisional Magistrate has offered to countersign the same.

The prospectus requires a certificate of the father/ mother of the candidate who is residing outside the State of Himachal Pradesh on account of private occupation, duly signed by the Tehsildar/ Sub Divisional Magistrate of the area concerned certifying that the father/ mother is running a private occupation at that place. To my mind, the certificate of the Bar Association duly countersigned by the Sub Divisional Magistrate, can be treated as achieving the objective of authenticating /certifying the occupation of the petitioner

at the stated place. For saying so, I draw support from a decision of the Hon'ble Supreme Court in **Supreme Court Bar Assn. v. B.D. Kaushik, (2011) 13 SCC 774**, where it recognized the nature of court annexed bar associations as meaning and implying that it is an association representing members regularly practising in the court and observed as under:

“27. The Supreme Court Bar Association, as the name suggests, is a society primarily meant to promote the welfare of the advocates generally practising in the Supreme Court. The name i.e. the Supreme Court Bar Association was formally registered under the Societies Registration Act, 1860 only on 25-8-1999. One of the prime objectives of SCBA is to establish and maintain adequate library for the use of the members and to provide other facilities and convenience of the members. Thus, the formation of SCBA is in the nature of aid to the Advocates Act, 1961 and other relevant statutes including Article 145 of the Constitution.

*28. There is no manner of doubt that court-annexed Bar Associations constitute a separate class different from other lawyers' associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognised by the court concerned. Court-annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. The court-annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. **The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court** and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practising in the court, parking place and canteen besides several other amenities. In the functions organised by the court-annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to*

solve them and vice versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration.”

Years ago, the Hon'ble Supreme Court, in the context of admissions, deprecated the practice of sacrificing the substance of the matter for mere form and prescriptions regarding procedures. Taking note of the difficulty and delay in obtaining certificates in the prescribed form and within the time as stipulated, it was observed that a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. In **Charles K. Skaria v. C. Mathew (Dr), (1980) 2 SCC 752, at page 762 :**

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application.”

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to

telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

21. *Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: Has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.*

22. *The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment  763 the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.*

23. *We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification*

is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.”

The same view was reiterated by the Hon'ble Supreme Court in a later case **Dolly Chhanda v. Chairman, JEE, (2005) 9 SCC 779**, at **page 781** :

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

The admission of the student to a professional college which is gained after years of sweat and toil, cannot be held hostage to the requirement of proof of the factum of occupation only in the manner prescribed. In the facts and circumstances of this case, and in the light of the observations of the Hon'ble Supreme Court as reproduced above, the certificate of the Bar Association regarding practice at Chandigarh duly counter signed by the Sub Divisional Magistrate, Chandigarh can be legitimately taken to be a compliance with the requirement of the prospectus.

The concerned Admission Committee is expected to take a decision accordingly.

Accordingly, this petition is disposed of with a direction to

respondent No.3 to forthwith countersign the occupation certificate issued to the petitioner by the District Bar Association, District Court Complex, Chandigarh.

A copy of this order be supplied to the Learned counsel for the parties under the signatures of the Special Secretary of the Bench.

September 01, 2015

gian

**(HARINDER SINGH SIDHU)
JUDGE**