
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.22024 of 2014

Date of decision: 27.11.2015

Ratik Kapur

...Petitioner

Versus

Union of India and others

...Respondents

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

Present: Ms. Anu Chatrath, Senior Advocate with
Ms. Loveinder Kaur, Advocate for the petitioner.

Mr. Anil Chawla, Advocate for respondents No.1 to 3.

G.S.SANDHAWALIA, J. (Oral)

The challenge in the present writ petition is to the letter dated 14.10.2014 (Annexure P/17) whereby respondent no.2-Society for Cultural Resources and Training has denied the scholarship to the petitioner for three seats of U.T.Chandigarh.

A perusal of the communication dated 14.10.2014 would go on to show that the petitioner had appeared for test in painting at New Delhi for grant of scholarship. The denial was on the basis that he had not achieved the requisite standard as laid down under the scheme which had to be "outstanding" or failing which "very good". Thus, the denial was on the ground that he was not found meritorious enough to award the scholarship. Resultantly the said decision is the subject matter of challenge.

The respondent no.2-society has raised various issues including issue of maintainability of the writ petition on the ground that it was not engaged in public activities and therefore, petition under Article 226 of the Constitution is not maintainable. On merits, it has been pleaded that the petitioner had applied for grant of scholarship in Painting (Visual Arts) and gone through the process of selection viz. interview and test. The Regional Selection Committee had graded him as "good" and the candidates were graded as 'outstanding', 'very good', 'good' and 'average'. On account of having failed to attain the 'outstanding' or 'very good' criteria, the scholarship was not granted. The scholarship could not be claimed as a

matter of right and total of 7 candidates were found eligible for award of scholarship and had been called for interview from 16.5.2014 to 21.5.2014. None of the candidate had been awarded 'outstanding', therefore, no candidate was awarded scholarship from UT Chandigarh in the first phase. However, one candidate Ms. Anhad Biyan who had appeared in the test on 18.5.2014 was awarded 'very good' grade and was awarded scholarship from UT Chandigarh during the second phase.

Counsel for the petitioner has vehemently argued that since there were three seats for UT Chandigarh and therefore, the petitioner was entitled for consideration and the merit list should have been prepared and the petitioner was entitled for the benefit of scholarship. Reliance has been placed upon the judgment of the Apex Court in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mohotsav Smark Trust Vs. V.R. Rudani (1989) 2 SCC 691** to submit that once the society was doing public duty and especially awarding scholarship, it would be amenable to writ jurisdiction. The relevant portion reads as under:-

“20. The term "authority" used in [Article 226](#), in the context, must receive a liberal meaning unlike the term in [Article 12](#). [Article 12](#) is relevant only for the purpose of enforcement of fundamental rights under [Art. 32](#). [Article 226](#) confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in [Article 226](#) are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

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22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by

mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found', technicalities should not come in the way of granting that relief under [Article 226](#). We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

Keeping in view the binding precedent of the Apex Court, wherein it has been held where a private body is performing public functions, it would always be open to this Court to examine whether their actions are justified or not. The objection as such regarding maintainability of the writ petition is not sustainable.

On merits, however, the issue remains whether the petitioner is entitled for scholarship as a matter of right. The defence as noticed of the society is that the Director General had taken a decision that the children taking part in the competition should be assessed and classified into four categories i.e. 'outstanding', 'very good', 'good' and 'average' and the children who were assessed below 'very good' were not to be considered for grant of scholarship. The petitioner has been assessed as 'good' in pursuance of the guidelines which have been framed. The guidelines read as under:-

"GUIDELINES FOR REGIONAL SELECTION COMMITTEE MEMBERS FOR RECOMMENDING THE NAME FOR AWARD OF SCHOLARSHIP(S).

The following grading may be marked by the Member-experts for each candidate separately at the time of interviews/tests in the Result Sheet:-

Outstanding Outstanding talent(s) may be awarded scholarship, means those candidates whose performance will be adjudged as Outstanding will be considered for scholarship(s) first of all.

Very good Talented student(s) may be considered for

award of scholarship(s) if scholarships are available at national level after the award of scholarship(s) to Outstanding talent(s). Please restrict the number to the minimum possible in this category not exceeding more than 03 and clearly graded as I,II & III also.

Good Talented but may not be considered for award of scholarship(s) as the scholarships are limited in numbers, however, if they are eligible as per the rules of the Scheme, could apply for next year.

Average Not to be considered for award of scholarships as they do not have any potential or aptitude for the coveted national scholarship and may not be given any further chance to appear in the interview/test in future also.”

A perusal of the above would go on to show that a valid criteria has been fixed. The assessment of the ability of the petitioner is a subject which was for the Committee to see within the prescribed guidelines. The said guidelines are not a subject matter of challenge in any manner. Nothing has been shown to this Court by which it is mandatory to fill up all the seats as has been argued by senior counsel. Once the petitioner has failed to cross hurdle of the prescribed criteria, this Court would be loath to come to a conclusion that the petitioner is better placed than as assessed by the Committee. It is settled principle that a decision of academic experts is not to be gone into by this Court and the Court cannot substitute its opinion of the experts. In such circumstances, there is no scope for interference for a positive direction regarding grant of scholarship .

Accordingly, there is no merit in the present writ petition and the same is hereby dismissed.

November 27, 2015
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(G.S.SANDHAWALIA)
Judge