

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

**CWP No.21406 of 2015
Decided on : 21.10.2015**

Niharika

... Petitioner

Versus

Baba Farid University of Health Sciences, Faridkot and others

... Respondents

(2)

CWP No.21348 of 2015

Akhilesh Sharma and another

... Petitioners

Versus

State of Punjab and others

... Respondents

(3)

CWP No.22024 of 2015

Prachee

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. C.M. Munjal, Advocate for the petitioner
in CWP No.21406 of 2015.

Mr. S.D. Bansal, Advocate for the petitioners
in CWP No.21348 of 2015.

Ms. Supriya Garg, Advocate for the petitioner
in CWP No.22024 of 2015.

Mr. Rakesh Verma, Sr. DAG, Punjab.

Mr. Ashish Rawal, Advocate for respondent,
Baba Farid University of Health Sciences.

Mr. Surinder Garg, Advocate for respondent No.3
in CWP No.21406 of 2015.

Mr. BBS Sobti, Advocate for respondent No.4
in CWP Nos.21348 & 22024 of 2015.

Mr. O.P. Sharda, Advocate for respondent No.5
in CWP No.21348 of 2015.

Mr. Munish Kapila, Advocate for respondent No.6
in CWP Nos. 21348 & 22024 of 2015.

G.S. Sandhawalia , J. (Oral)

The present judgment shall dispose of three writ petitions i.e. CWP Nos. 21406, 21348 and 22024 of 2015. The facts are being taken from CWP No.21406 of 2015.

The petitioners seeks the admission against the vacant seats in the MBBS Course on account of their ranking in the PMET-2015. It is their case that the petitioners had been called for counseling on 29.09.2015 and 30.09.2015 which is admittedly the last date for admissions. It is the categorical case of the petitioners that in spite of their presence admission was not granted to them and that there are vacant seats available and they are liable to be considered for admissions against the vacant seats.

The petitioners Akhilesh Sharma & Sheenam Garg in CWP No.21348 of 2015 are ranked at Sr. No.1199 and 1207, whereas in CWP No.21406 of 2015 the petitioner is at Sr. No.1221 and in CWP No.22024 of 2015 the petitioner is at Sr. No.2407 of the merit list prepared by the respondent-University.

The petitioners also placed reliance upon the representation filed on 30.09.2015 (Annexure P-6) at 7.00 P.M before the Registrar of the Selection Committee and on the next day at 2.00 A.M (Annexure P-7). The subsequent representation dated 01.10.2015 is also appended as Annexure P-8. It is thereafter the petitioners immediately have approached this Court on 06.10.2015, 07.10.2015 and 14.10.2015, pleading that seats are still lying vacant and petitioners are liable to be considered for admission on the strength of their merit and on account of being present there before the admission committee.

The University in its short reply filed has fallen back on Clause 28 (f) of the notification vide which admissions were done to submit that after 30.09.2015 regardless of any vacancies, no admissions are to be made. It is, however, admitted that the last seat was filled at Sr. No.1193 and that there are 28 candidates between merit 1193 to 1221. Reference has also been made to CWP No.21348 of 2015 filed by Akhilesh Sharma and Sheenam Garg, wherein merit is higher.

It has further been averred that respondents No.2 and 3 did not deposit the fees and, therefore, the seats are still lying vacant due to the non-deposit of the fees.

A short issue, thus, has arisen whether due to the shortage of time with the committee to fill up the seats and their inability to offer the vacant seats on the non-deposit of the fees by the respondents No.2 and 3 at the last moment, the petitioners are entitled for admission. It is not disputed as per the photocopy of the attendance chart which has been produced today in the Court that the petitioners in CWP No.21348 of 2015, namely, Akhilesh Sharma and Sheenam Garg were present on 30.09.2015, but it is on account of the committee's difficulty to offer the seats to them on account of non-deposit due to the shortage of time, the petitioners have been prejudiced.

The petitioners have been preparing and studying for the medical course and were in the zone of consideration and their valuable rights are involved and only on account of the technical plea of the cut-off-date of 30.09.2015, they cannot be denied the benefit of admission. It is not the case of the respondents that they were not present and they are not entitled for admission or there was any fault on their account. It has been noticed that in one of the cases, the representations have been filed late at night on 30.0.2015 and early morning the next date and therefore the

petitioners cannot be prejudiced and loose their valuable rights of admission, specially in view of the fact that two seats are still lying vacant.

A Division Bench of this Court in “A Division Bench of this Court in Association of Education Colleges Vs. Haryana State 2009 (1) SCT 157 examined the issue whereby a large number of seats for the B.Ed. Course were going vacant and the University was opposing the said prayer for admission on the ground that it was at a belated stage and the students had not appeared in the entrance test. It was noticed that the seats were available in the Colleges and were supported by the infrastructural requirements stipulated by the NCTE, which was a valuable resource and should not be allowed to go waste, subject to the fulfilment of the academic standards. Accordingly, it was held that the students should be allowed to be admitted on the basis of merit who had appeared in the qualifying examinations, without holding any independent Common Entrance Test. Relevant portion of the judgment reads as under:

“14. The next question then is whether this Court should permit admissions or let the available seats go waste, Which out of the two options would serve the ends of justice is the only question that detained us. If one were to adopt a pedantic and hyper technical approach, one could say that admissions need not be made at this stage as the University's apprehension of dilution of academic standards and disturbance of academic calendar should not be disregarded. The wisdom

behind that approach however, appears out- weighed by the compelling need to avoid the wastage of seats and denial of an opportunity to eligible students to get admitted against the same. It is true that academic standard needs to be maintained and academic decisions by expert bodies respected as far as possible, but it is equally true that when admissions are delayed, a certain amount of adjustment can and ought to be made by the Institutions as also the affiliating University. These adjustments do not, however, necessarily dilute the academic standard as is apprehended by the University in the instant case. The Institutions are ready and capable of making up the requisite number of working days by holding special classes for the students, who have joined late. The admission granted at this stage will not also require the University to compromise on the 40 days practice teaching or the percentage of lectures, which a student must have for being declared eligible for taking the examination. It is noteworthy that candidates admitted to a session has to perform by the same standard as is required of the other candidates in order to be declared successful in the examination. If a student, otherwise admitted late, is unable to come up to the standard of the University, he/she will be declared unsuccessful. Super-added to the above is the fact that the number of students, who may even now seek admissions, may not be very large to require holding of any test to determine their inter-se merit for grant of admission. The argument advanced by Mr. Gupta that the Colleges may have to hold independent CET for granting admissions, which may delay the completion of admission process, is in our opinion, misplaced. Such a situation could arise only where the number of students applying is more than the number of seats available in the Institutions. That, however, is not the position in the instant case. Even so, the apprehension that lesser merited students may be admitted while ignoring meritorious students, can be allayed by directing that the Institutions shall grant admissions strictly in accordance with the merit in the qualifying examination, which is one of the recognized norms for granting such admissions.”

This Court is well aware of the cut-off-date fixed of 30.09.2015, but there is a window left open for the Courts by the Apex Court in ***Asha Vs. Pt. B.D. Sharma University of Health Sciences and others'*, 2012 (7) SCC 389** , wherein the Courts can exercise their power where they feel that the admission may be permissible where the ends of justice would be subverted and the purpose of law would stand frustrated. There is no fault which can be attributed to the petitioners and on account of the cut-off-date, the admission cannot be denied to them. The relevant part of the observations made read as under:-

“29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh and Others [(2002) 7 SCC 258], Ms. Neelu Arora and Another v. Union of India and Others [(2003) 3 SCC 366], Aman Deep Jaswal v. State of Punjab and Others [(2006) 9 SCC 597], Medical Council of India v. Naina Verma and Others [(2005) 12 SCC 626], Mridul Dhar and Another v Union of India and Others [(2005) 2 SCC 65], Medical Council of India v Madhu Singh and Others [(2002) 7 SCC 258].

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission

beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission

violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru and Others v. State of J & K and Others [(1981) 2 SCC 484]; Chavi Mehrotra v. Director General Health Services [(1994) 2 SCC 370]; and Aravind Kumar Kankane v. State of UP and Others [(2001) 8 SCC 355].

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38.2. Question (b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.”

The judgment has also taken into consideration the earlier judgments of the Apex Court in **'Mridul Dhar Vs. Union of India' 2005 (2) SCC 65** and in **Priya Gupta Vs. State of Chhattisgarh and others' 2012 (3) RSJ 340** and, and therefore

this Court get the strength from the said observations which has been reproduced above to ensure that infrastructure is well utilized and the students who were present and agitating for their rights are granted the benefit of admission. Apart from their being present they immediately approached this Court within the first week itself of October and therefore no fault cannot be found with them.

It is not disputed that the PMET-2015 was a subject matter of litigation on account of various factors and the result could not be declared due to pendency of **CWP No.11475 of 2015 titled as 'Ritika and others Vs. State of Punjab and others'** which was disposed of on 01.09.2015. The result was thereafter revised, in view of the directions issued by the Single Judge of this Court. The matter went to the Division Bench in LPA No. 1427 of 2015 and the Division Bench has upheld the judgment of the Single Judge, only on 28.09.2015.

Resultantly, the committee was left with two days to finalize the admission process and due to this, difficulty has arisen. These are circumstances which were beyond their control and these led to this stage due to which the petitioners are being prejudiced.

It is settled principle that the act of the Court will harm no one as per the maxim "*actus curiae neminem gravabit*". 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 Janani 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 Janani Sahoo is perfectly justified.”

Counsel for the University has strongly opposed the admission submitting that there are candidates higher in merit at Sr. No.1194 to 1198 and from 1200 to 1206.

The said submissions cannot be accepted. The said persons have neither approached this Court and neither their presence is shown in the attendance sheet, apart one candidate Divya Gupta who is at Sr. No.1200. The said candidate had never approached this Court and thus has given up her right and cannot stake any claim. It is settled principle that the law is for the vigilant and not for those who sleep over their rights and the early bird catches the worm.

In such circumstances, the CWP No.21348 of 2015 is allowed. The petitioners Akhilesh Sharma and Sheenam Garg are directed to be given admission against the two available seats which have been vacated by respondents No.2 and 3. The said petitioners will deposit the fees forthwith within a week, in view of the intervening holidays.

The University shall allocate two seats to these

petitioners which are available in the Punjab Institute of Medical Sciences, Jalandhar and Gian Sagar Medical College & Hospital, Banur, on the deposit of the fees.

In case there is any shortage of lectures, the said college will ensure extra classes for the petitioners to make up for the shortage for the last 3 weeks.

In view of above CWP No.21348 of 2015 is allowed and CWP Nos.21406 and 22024 of 2015 are dismissed.

OCTOBER 21, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE