

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

CWP No. 22535 of 2014 (O&M)
Date of decision: February 23, 2015

Ravi Dalal

...Petitioner

Versus

Pt. Bhagwat Dayal Sharma and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Ramesh Malik, Advocate,
for the petitioner.

Mr. Anurag Goyal, Advocate with
Mr. Amit Rao, Advocate,
for respondent No.1.

Mr. Munish Mittal, Advocate,
for respondent No.3.

K. KANNAN, J. (Oral)

1. The petitioner, who applied for admission to BAMS course, was seeking for consideration under the handicapped category quota. Clause 9 of the prospectus provided that only candidates having locomotor disability of lower limbs between 50% to 70% shall be considered for admission as physically handicapped and in case candidate was not available in that category, the candidates with disability of lower limbs between 40-50% shall be considered for admission. The petitioner had been admitted to the 2nd respondent College as a person whose disability was assessed at 50% and for which the necessary certificate issued by the

Disability Board had been submitted along with the application. The 3rd respondent had also been called for counselling along with the petitioner. But since her own disability, as per the certificate produced by her was at 40%, she was not considered for admission to the vacancy in the government college, but she had been admitted to a self-financing MSM Institute of Ayurveda Khanpur Kalan, exclusively for the girls as a person who had 40% disability as per the certificate and which college ought to have not filled up a seat meant for handicapped person above 50%.

2. The petitioner's grievance is that his admission to the 2nd respondent government college was sought to be withdrawn and the 3rd respondent was admitted to his place as a person more meritorious and whose disability was shown to be re-appraised at 70% after verification of the certificate. The petitioner would contend that the prospectus provided for two counselling sessions and after they have been completed and admission made, modification was sought to be made withdrawing the admission to the petitioner later through third counselling session, which was untenable.

3. Learned counsel appearing on behalf of the 3rd respondent would support the admission granted to her by referring to clause 9 of the prospectus which not merely provided for extending reservation on ground of disability and the manner of consideration but also contained a clause that the disability certificate produced would be subject to verification by a Medical Board and the decision of the Medical Board shall be final. This, according to her, had given her a right of re-appraisal at the college level and if a disability was later re-assessed at 70%, she was entitled to the benefit of such consideration and since she was higher in the order of merit

than the petitioner, the petitioner was bound to lose his seat to her. The counsel appearing on behalf of the university would support its own decision to admit the 3rd respondent to the 2nd respondent college by reference to the fact that there were two seats set apart for handicapped category, one person who had disability over 50% had 67 marks and the 3rd respondent had 60 marks, whereas the petitioner had only 49 marks. Since the 3rd respondent's disability was re-assessed to be more than 50% and having also ranked higher in the order of merit to the petitioner, she was entitled to consideration for admission.

4. This court, while ordering notice has explained through order dated 10.11.2014, granted stay of the impugned order and the petitioner had also secured his admission. The point which required to be examined is the manner of understanding Clause 9 of the prospectus and, therefore, I reproduce the same:-

“9. Only candidates having locomotor disability of lower limbs between 50% to 70% but otherwise medically fit for admission to the course will be considered for admission as physically handicapped. In case candidates are not available in that category then only candidates with disability of lower limbs between 40-50% may be considered for admission as per Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi, letter NO. C. 18018/2/2009-ME (P.1) dt. 17.2.2009. Disability certificate (Appendix-F) shall, however, be subject to verification by a Medical Board. The decision of the Medical Board shall be final.”

5. I would understand the finality to the decision of the Medical

Board which contemplates is only to ensure that the disability certificate given shall be verified to note that the disability was not deliberately escalated to secure a consideration for the disability category. A verification, if the admission had been granted at the 1st counselling provisionally subject to verification, the verification must consist of the genuineness of the certificate and to verify that the certificate does not set a disability more than what a person actually has. It cannot result in a situation through the court verification that the disability itself is more and the original certificate issued has undervalued the disability. Such a process would allow for needless manipulation and keep the admission in a state of flux. The higher disability assessed by the Medical Board in favour of the 3rd respondent cannot be taken to be permissible. The clause, in my view, cannot be so verified so as to secure a higher value of disability than how the candidate herself was prepared to submit her case at the time of filing of the application for admission.

6. The impugned order is quashed and the petitioner is permitted to continue in the course. The 3rd respondent shall be re-assigned to the college where she was originally granted admission and she will have, however, the benefit of attendance marked in the 2nd respondent to enure to 3rd respondent college.

7. The writ petition is disposed of on the above terms.

February 23, 2015
prem

(K.KANNAN)
JUDGE