

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

**LPA No. 1191 of 2015 (O&M)
Date of decision: 13.08.2015**

Karanvir Gosal

...Appellant

Versus

Panjab University and others

.... Respondents

**CORAM: Hon'ble Mr. Justice S.S.Saron
Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Mr. Piyush Kant Jain, Advocate
for the appellant.

S.S. Saron, J.

The Letters Patent Appeal has been filed by the appellant against the judgment and order dated 24.07.2015 passed by the learned Single Judge in CWP No. 14857 of 2015.

The appellant is a candidate seeking admission to the MBBS course in the Government Medical College and Hospital, Sector 32, Chandigarh (respondent No.3) under the Non Resident Indian (hereinafter for short- 'NRI') category. He appeared in the Common Entrance Examination held on 21.06.2015 along with 23 other students. There were 6 seats under the NRI category against which Parneet Kaur Grover, Nida

Naeem, Shivani Gupta and Rajat Jain were declared successful and were admitted. The appellant remained unsuccessful in the said examinations.

The appellant filed a writ petition in this Court inter alia contending that in fact the holding of an entrance test for NRI category students as ordered by the Medical Council of India (MCI for short) vide circular dated 16.01.2015 had been quashed by the Hon'ble Karnataka High Court in writ petition No. 102850-102851 of 2015 decided on 17.04.2015 (Annexure P2). Therefore, the act of conducting the examination for NRI category students seeking admissions to MBBS course was improper and the criteria earlier fixed on the basis of marks obtained in the qualifying examinations for admission to MBBS course was liable to be followed and taken into consideration.

The learned Single Judge held that the qualified candidates had not been impleaded as parties; besides, allegations of mis-management on the part of respondent No.3-College in taking the entrance examination and the probable use of unfair means by the successful candidates, though without any evidence, were levelled. It was further held that the appellant having participated and remaining unsuccessful, he had also tried to raise an issue that the entrance examination was held on the basis of a circular issued by MCI dated 16.01.2015, which had been struck down by the Karnataka High Court on 17.04.2015, whereas the entrance examination was held on 21.06.2015 and if the petitioner was so aggrieved, he should have challenged the said circular instead of subjecting himself to the entrance examination in which he has failed. The learned Single Judge held the question whether there was mis-management by respondent No.3-College at the time of taking

entrance examination or the successful candidates used some kind of unfair means was a pure question of fact which could not be determined by the Court in the writ jurisdiction. Moreover, the petition, it was held, was bad in law as the petitioner (now appellant) had challenged the admissions of the successful candidates to the MBBS course without impleading them as parties. Accordingly, no merit was found in the petition, which has been dismissed.

Learned counsel appearing for the appellant submitted that the candidates who had qualified were not made parties to the petition as the petition had been filed levelling allegations of mismanagement on the part of the Government Medical College and Hospital, Sector 32, Chandigarh (respondent No.3) in taking the entrance examination and also the probable use of unfair means by the successful candidates. It is further submitted that in any case he has now filed CM No.2526 LPA of 2015 for impleading the successful candidates namely Parneet Kaur Grover, Nida Naeem, Shivani Gupta and Rajat Jain as respondents No. 2 to 5. It is submitted that this Court should exercise its discretion and implead them as parties as held in ***Ramesh Hirachand Kundanmal versus Municipal Corporation of Greater Bombay and others*** (1992) 2 SCC524. It is still further submitted that the MCI circular having been quashed by the Hon'ble Karnataka High Court the fact that the appellant did not assail the same is not of much consequence. He has placed reliance on ***State of Haryana Versus Hardyal*** (1985) 2 SCC 629.

We have given our thoughtful consideration to the contentions of the learned counsel for the appellant.

The factual position is that the MCI issued a circular on 16.01.2015 providing for taking the common entrance examination for all categories of NRI students. The said circular was assailed before Karnataka High Court in ***Basaveshwar Vidya Vardhak Sangha versus Medical Council of India*** Writ Petition No. 102850-102851 of 2015 and other Writ Petitions No. 102916-102917 of 2015. A Division Bench of the Hon'ble Karnataka High Court vide order dated 17.04.2015 quashed the said circular. The Medical Council of India aggrieved against the said order dated 17.04.2015 of the Karnataka High Court, filed SLP No. 16229-16230 of 2015 which was dismissed on 06.07.2015. However, before the dismissal of the SLP, the common entrance examination for admission to MBBS course under NRI quota category of students in respondent No.3-College had been conducted on 21.06.2015 and the result was declared on 25.06.2015. The process of admissions were completed and four candidates who had been selected were not parties to the petition. However, a CM has now been filed for making them as parties. In ***Ramesh Hirachand Kundanmal versus Municipal Corporation of Greater Bombay (supra)***, the Hon'ble Supreme Court held that sub Rule (2) of Rule 10 of order 1 of the Code of Civil Procedure (hereinafter for short- 'CPC') gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 CPC which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can

be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

There is no dispute to the said proposition of law. However, it is a settled proposition of law that rights of selected candidates who have secured admission to a medical course cannot be taken away without them being impleaded as parties. Besides, it is for the petitioner to implead necessary parties to the lis. This court is not to implead persons as parties with whom the petitioner does not wish to contest. Even otherwise the Court is not to implead persons as parties on the mere asking of the appellant and that too after the defect has been pointed out by the learned Single Judge in the order that has been passed. In fact the case of the appellant is that there has been mis-management on the part of respondent No.3-College in taking the entrance examinations and probable use of unfair means even. The said allegation in fact is bereft of any material or even prima facie evidence, which may be inquired into. The allegation of probable use of unfair means has been made merely for the sake of making. In the absence of any clear allegation against any particular official of the respondent No.3-College or any student who has possibly used unfair means, besides, in the absence of impleading such person eo-nominee so as to enable him to answer the charge, the allegation as made cannot be sustained. Therefore, there being no material to go into the allegation of possible use of unfair means by the students who have been admitted, no enquiry is liable to be made.

Resultantly, they being now impleaded as parties, as has been prayed for, would be a mere formality.

The learned Single Judge also held that the petitioner having remained unsuccessful after having participated in the competitive examination he had tried to raise the issue that entrance examination was held on the basis of circular dated 06.01.2015 issued by the Medical Council of India, which had been struck down by the Karnataka High Court on 17.04.2015, whereas the entrance examination was held on 21.06.2015. Learned counsel cites judgment in the case *State of Haryana v. Hardyal* (supra). In the said case it was held that the Arbitrator had no jurisdiction to make an award after the fixed time. If the award made beyond the time is invalid, the parties are not estopped by their conduct from challenging the award on the ground that it was made beyond time merely because of their having participated in the proceedings before the arbitrator even after the expiry of the prescribed period. There can be no estoppel against a statute.

It is beyond doubt that there can be no estoppel against a statute or the law. However, in the present case in the selection process for admissions to medical courses, the rights of others who have secured admissions are also involved and affected. The students who have been admitted have not been made parties. They are sought to be dislodged on the ground of possible use of unfair means and that too without them being parties to the lis. As already noticed, there is no material of possible use of unfair means. Therefore, the question of the circular issued by MCI being quashed in the facts and circumstances as pleaded would not make any difference. The appellant has not shown or assailed the prospectus

Annexure P-5 issued by the Government Medical College and Hospital Sector 32, Chandigarh (respondent No.3) to be in any manner improper. The candidates have taken their examination on the basis of the prospectus as issued to which there is no challenge. Therefore, it would be quite inappropriate at this stage to upset the admissions of the students who have been admitted and are undergoing their MBBS course.

We, therefore, find no merit in the appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(P.B. BAJANTHRI)
JUDGE

13.08.2015
pooja saini