

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1570 of 2015 (O&M)
Date of decision:11.12.2015.

Niharika

...Appellant.

Versus

Baba Farid University of Health Sciences, Faridkot and others

...Respondents.

Coram: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mr. Justice Amol Rattan Singh

Present: Mr. C.M. Munjal, Advocate, for the appellant.

S.S. Saron, J.

This Letters Patent Appeal has been filed by the appellant - Niharika against the judgment and order dated 21.10.2015 passed by the learned Single Judge in CWP No.21406 of 2015 in case titled 'Niharika v. Baba Farid University of Health Sciences, Faridkot and others'.

The appellant passed her 10+2 examination from the Central Board of Secondary Education (CBSE) in the year 2015. She appeared for the Board examinations from R.B.D.A.V. Senior Secondary School, Bathinda. She obtained 90% marks. The appellant applied for appearing in the Pre-Medical Entrance Test ('PMET' - for short) 2015 for consideration for admission to the MBBS/BDS Course. She was assigned roll No.505048. A photocopy of the admission application form (Annexure P1) has been placed on record. The procedure for appearing in the PMET-2015 for admission to the MBBS/BDS Courses is governed by the Prospectus (Annexure P2) issued by Baba Farid University (respondent No.1).

The appellant filed a petition (CWP No.21406 of 2015) in this Court for directing the Baba Farid University of Health Sciences, Faridkot through its Registrar (respondent No.1) ('Baba Farid University' - for short) to admit her in the management quota seat of MBBS Course in any of the three colleges as respondents No.2 and 3 after the final counselling on 30.09.2015, despite being allotted seats for admission to MBBS Course did not deposit the requisite fee. In the alternative, it was prayed by the appellant that she be admitted against any vacant seat of the management quota as per terms and conditions of the Prospectus issued by the Baba Farid University (respondent No.1).

The State Government in the Department of Medical Education and Research issued notification dated 30.03.2015 for the purposes of admissions to MBBS/BDS Courses for the session 2015. Clause 21 of the said notification provides for admission to private institutions and reads as under:

"21. Admission to Private Institutes:

(i) The distribution of seats in private medical institutions would be:-

Government quota seats 50%

Management/Minority
quota seats 50% (including
15% NRI quota)

Note: Regarding minority seats in the SGPC Institutions namely Sri Guru Ram Dass Institute of Medical Sciences and Research and Sri Guru Ram Dass Institute of Dental Sciences and Research, Amritsar, the NRI

seats be divided equally between the Government quota and Minority quota as per Government Notification No.5/19/ 2004-5HB-III/424 dated 07.02.2005.

(v) The reservation in private institutes (for Government/Management quota seats) will be as under:-

(i) Scheduled Caste 25%

(ii) Backward Classes 5%

Note: The Backward Class Certificate must be as per the latest instructions of the Government of Punjab in which the annual income of the family is specifically certified.

(vi) Physically handicapped/ orthopedically handicapped 3%

(ix) Migrants from Jammu & Kashmir due to terrorist violence. 1%

iii) The vacancy, if any, generated due to exceptional circumstances or surrender of seats after the 2nd centralized counselling would be filled by the admission committee headed by the Principal of Dayanand Medical College and comprising of the representative each of the Government and the University, strictly on the basis of merit of the corresponding year. This counselling will be held at GGS Medical College, Faridkot.

iv) The minority quota seats shall be filled on the

basis of *inter se* merit of the candidates in the test conducted by the minority institute, or on the basis of marks obtained in PMET-2015. The institutions will also upload the admission form on institute website.

v) The representative of the University would be at liberty to place on record the copies of applications received in the BFUHS directly for admission to the institutes for consideration by the Committee.

The above clause provides that for admission to private institutions, 50% seats were reserved for Government quota and 50% from management/minority quota. The latter includes 15% seats for the quota of Non-Resident Indians ('NRIs' - for short). The said notification dated 30.03.2015 is part of the Prospectus (Annexure P2).

The result of the PMET-2015 that was held in the month of June, 2015 was assailed in this Court in the case of Reetika and others v. State of Punjab and others (CWP No.11475 of 2015), which was disposed of on 01.09.2015. In consequence of the directions issued by the learned Single Judge, the PMET-2015 result was revised by the Baba Farid University (respondent No.1). LPA No.1427 of 2015 was filed against the order of the learned Single Judge, which was dismissed on 28.09.2015. It may be mentioned that SLP (C) No.31023 of 2015 against the decision of the LPA has been dismissed by the Hon'ble Supreme Court on 16.11.2015.

After revision of the PMET-2015 result, the admission

process was thereafter started. The appellant in consequence of the result that was revised got 528 marks and her ranking was at serial No. 1221. The result-sheet (Annexure P3) is placed on record.

The Baba Farid University (respondent No.1) initiated the first online counselling on 08.08.2015. This was followed by the second online counselling held on 24.09.2015. The appellant applied for the BDS Course under the management quota of Baba Jaswant Singh Dental College, Ludhiana. She deposited her fee and reported to the college.

The Baba Farid University (respondent No.1) held an extended second counselling on 29.09.2015, which could not be concluded and it was further postponed to 30.09.2015. According to the appellant, management quota seats were available at Gian Sadar Medical College, Banur; PIMS, Jalandhar and Dayanand Medical College, Ludhiana. The appellant was present during the second extended counselling at Guru Gobind Singh Medical College, Faridkot on 03.09.2015 for seeking admission to a MBBS seat. The fee counters of OBC and HDFC Banks had been set up for accepting tuition fee.

The appellant was called for a seat in the management quota, but a candidate before her with rank at serial No.1193 was selected. The management quota seat was announced as filled with candidate having serial No.1193. According to the appellant, there was no other candidate present till serial No.1221, i.e. the ranking of the appellant, at that time. The appellant later came to know that two of the selected candidates, i.e. respondents No.2 and 3, did not deposit the requisite fee at the banks' counters, as they had already

got admissions in the MBBS Course with Adesh University. The appellant, on coming to know that two seats were vacant as the requisite fee was not deposited by two candidates, requested the Chairman of the Selection Committee to allot a seat to her from the management quota and get her necessary tuition fee deposited. A written submission (Annexure P6) was also made at 07:00 p.m. on 30.09.2015, which was duly received. The appellant then approached the Vice Chancellor of the Baba Farid University (respondent No.1) on his mobile number between 07:30 to 10:38 p.m. on 30.09.2015. Later, a 'what's app' message (Annexure P7) was sent to the Vice Chancellor at 02:15 a.m. on 01.10.2015. The Vice Chancellor, it is stated, asked the appellant to make a representation to the Baba Farid University (respondent No.1). Accordingly, the appellant by way of website message (Annexure P8) made a representation on 01.10.2015 at 12:30 p.m. The provisional selection list (Annexure P9) of the MBBS admission candidates selected on 30.09.2015 during extended counselling as made available on the internet has been placed on record.

The case of the appellant is that two seats fell vacant for the MBBS Course as two candidates did not deposit the necessary fee. Then it was a right of the next candidate, i.e. the appellant, to be allocated a seat in the management quota of MBBS in any of the colleges providing management quota seats. There was no reason for not allocating a seat to her when seats were available.

The learned Single Judge considered the case of the appellant along with the cases of Akhilesh Sharma and Sheenam Garg (petitioners in CWP No.21348 of 2015) as also that of Prachee

(petitioner in CWP No. 22024 of 2015). The writ petition of Akhilesh Sharma and Sheenam Garg (petitioners in CWP No.21348 of 2015) was allowed and two seats were ordered to be allocated to them. Their ranking in order of merit list prepared by the Baba Farid University (respondent No.1) is at serial No.1199 and 1207. The ranking of the appellant is at serial No.1221 and that of Prachee (petitioner in CWP No.22024 of 2015) is 2407.

It was noticed by the learned Single Judge that the Baba Farid University (respondent No.1), in its short reply, submitted that no admissions regardless of any vacancy were to be made after 30.09.2015. It was, however, admitted that the last seat that was filled was of a candidate who ranked at serial No.1193. There were twenty-eight candidates between the candidate who ranked between serial No.1193 to the rank of the appellant, who is at serial No.1221. The learned Single Judge allowed the writ petition filed by Akhilesh Sharma and Sheenam Garg against two available seats that were vacated by respondents No. 2 and 3.

Therefore, the two vacant seats being granted to Akhilesh Sharma and Sheenam Garg, who are admittedly higher in rank than the appellant in order of merit, the appellant cannot have a grievance of a seat not being allotted to her. The appellant stands admitted to the BDS Course at Baba Jaswant Singh Dental College, Ludhiana where she has deposited her fee. Her claim for allotting a seat for the MBBS Course is not sustainable, as candidates higher in merit than her, i.e. Akhilesh Sharma and Sheenam Garg, have been given the two seats for which respondents No.2 and 3 did not deposit the necessary fee.

In the circumstances, there is no merit in the appeal, which would warrant interference with the order of the learned Single Judge.

Consequently, the appeal being devoid of any merit is dismissed.

(S.S. Saron)
Judge

11.12.2015
Ramesh

(Amol Rattan Singh)
Judge

Note: Whether to be referred to the Reporter: No.