

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

Date of decision: 22.07.2015

LPA No.2154 of 2014

Punjab Private Self Financed Dental College Association ..Appellant

Vs.

State of Punjab & others ..Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

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. Puneet Jindal, Senior Advocate, with
Mr. Kumar Vishav Aggarwal, Advocate, for the appellant.

HEMANT GUPTA, J.

The instant appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Judge of this Court on 02.09.2014, whereby the request of the appellant-Association for admitting the students on the basis of common entrance test to be conducted by the Association was dismissed.

Challenge in the writ petition is to the order dated 31.12.2013, whereby the representation of the appellant-Association for exempting from the admission process by the State and to conduct its own entrance test was declined. Challenge was also to the communication of the State Government on 05.11.2013 to the Central Board of Secondary Education (CBSE) giving its willingness to participate in All India Pre-Medical/Pre-Dental Entrance Test (AIPMT) for filling 15% All India quota seats. In respect of remaining 85%

seats, the State Government issued a public notice that such seats would be filled up on the basis of merit of AIPMT.

The appellant-Association, a body of the Private Self Financed Dental/Medical Colleges, sought to conduct its own examination in terms of the liberty granted by the Hon'ble Supreme Court in Priya Gupta Vs. State of Chhattisgarh (2012) 7 SCC 433. The appellant-Association also relied upon the judgments reported as Modern Dental College and Research Centre & others Vs. State of Madhya Pradesh & others (2009) 7 SCC 751 and Modern Dental College and Research Centre & others Vs. State of Madhya Pradesh & others (2012) 4 SCC 707.

On the other hand, the stand of the State is that the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (for short 'the Act') was enacted in pursuance of the decision of the Hon'ble Supreme Court in P.A.Inamdar & others Vs. State of Maharashtra & others (2005) 6 SCC 537. The legality and validity of such Act has been upheld by a Full Bench of this Court in Navdeep Kaur Gill & others Vs. State of Punjab 2011 (2) ILR Punjab & Haryana 470. Reliance was also placed upon another Division Bench judgment of this Court in Punjab Private Unaided Medical and Dental Colleges Association Vs. State of Punjab 2012 (4) PLR 722, wherein the writ petition filed by the Association of Private Unaided Medical and Dental Colleges claiming autonomy for the purpose of admission under the Management/Non-resident Indian category to Graduate and Post Graduate Courses was declined.

Learned counsel for the respondents also referred to a recent judgment rendered by this Bench in LPA No.919 of 2015 titled 'Aditi Sharma & others Vs. State of Punjab & others' decided on 02.07.2015, whereby the students admitted by the Private Health Sciences Educational Institutes on the

basis of marks obtained in the qualifying examination was found to be illegal and against the provisions of the Act.

The learned Single Judge has considered the respective arguments in extenso. We endorse such findings. However, in the present appeal, the reliance of the learned counsel for the appellant is on an observation contained in para 46.5 in Priya Gupta's case (supra), wherein reference is made to admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. The relevant observation reads as under:

“46.5 The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State ‘or the body of the private colleges’. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002, the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.” (...emphasis supplied)

However, we find that such observation is in the context of the issues raised in the said case. In the said case, an entrance test was conducted by the Government of Chhattisgarh. NMDC Medical College, Jagdalpur was given two seats under All India quota, which were not filled up. 48 students were admitted, but two seats were lying vacant. The Directorate of Medical Education allegedly directed that the seats should be filled up from the merit list and the candidates be contacted over telephone. If contact could not be established with any candidate, then fill up the vacant seats from amongst the candidates available in the college according to merit. It is in pursuance of such liberty, the student-appellants were given admission. The Directorate General of Health Services has subsequently taken a stand that the letter, the

basis of admission, was fake and the admissions were cancelled. The Court observed as under:

“38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, nonexploitative and fair are mandatory requirements of the entire scheme.

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44. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the concerned authorities, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

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46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions *in rem* for their strict compliance, without demur and default, by all concerned.”

In view of the above, we have no hesitation to say that the expression used in para 46.5 i.e. ‘or the body of the private colleges’ is not an issue arising for consideration in the said case nor is relevant in the face of provisions of the Act, which regulate admissions to all Medical Institutes in the State. In the Act, the power has been given only to exempt minority Institutions from the common admission process.

Learned counsel for the appellant also referred to the provisions of the Act, as originally notified on 27.03.2006 and later amended vide Punjab Act No.24 of 2006 vide notification dated 11.10.2006. It is contended that the original Act contemplated seats to be filled up on the basis of centralized

receipt of applications and centralized counseling on the basis of inter se merit, but such provision of centralized receipt of applications and centralized counseling stands deleted by the amended provisions of the Act. It is, thus, contended that there is no prohibition under the Act for admitting students on the basis of common entrance test to be conducted by the Private Medical Institutes.

Relevant provisions of the Act read as under:

- “3. (1) The State Government shall regulate admission, fix fee and make reservation for different categories in admissions to private health sciences educational institutions.
- (2) For the purpose of determining the fee, the State Government may require any private health sciences educational institution to furnish such information, as it may deem appropriate.
- (3) The State Government shall ensure that admission in a private health sciences education institutions is made in a fair and transparent manner on the basis of the inter-se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette;
- Provided that the State Government may, by notification in the Official Gazette, exclude the diploma or certificate courses, offered by the private health sciences educational institutions from the purview of this sub-section.
- (4) Notwithstanding anything contained in sub-section (3), the State Government may, exempt minority institutions from the purview of that sub-section.
- (5) Consequent upon the exemption granted under sub-section (4), a common authority of the respective minority institutions, shall conduct a separate test in a fair, transparent and non-exploitive manner for admission of students in minority institutions in accordance with the merit, determined by the said authority.
- (6) In case, it is found that the aforesaid separate test has not been conducted in a fair, transparent and non-exploitive manner,

the State Government shall have the power to cancel the same and direct the concerned authority to re-conduct the test.

4. (1) The eligibility criteria for admission to a private health sciences educational institution shall be such, as may be determined and notified by the State Government from time to time.
- (2) The State Government or any other authority, authorized by it, shall conduct the Common Entrance Test for making admission to all the private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test.
- (3) Admission in all private health sciences educational institutions, except in those, which are specifically exempted under this Act, and in the case of Foreign Indian Students, shall be made on the basis of the inter-se merit of the candidates, determined in accordance with the Common Entrance Test.”

Section 3 of the Act, as reproduced above, empowers the State Government to regulate admission in private health sciences educational institutions. Sub-section (3) of Section 3 of the Act mandates the State Government to ensure that the admission in a private health sciences educational institutions is made in a fair and transparent manner on the basis of the inter se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure notified by the State Government. Section 4 (3) empowers the State Government to conduct common entrance test for making admission in all private health sciences educational institutions, except in those, which are specifically exempted for such test.

Sub-section (2) of Section 4 of the Act mandates the State Government or any other authority, authorized by it, to conduct the Common Entrance Test for making admissions to all private health sciences educational institutions. It admits no exception except in the case of minority institution, which can be exempted in terms of sub-section (5) of Section 3 of the Act.

Since the statutory provisions mandate the State Government to admit students on the basis of common entrance test, any other method of admission, stands specifically excluded. The manner of doing a thing in a particular manner excludes all other methods of doing the same thing. In State of U.P. Vs. Singhara Singh, AIR 1964 SC 358, the Hon'ble Supreme Court held as under:

“7. In *Nazir Ahmed vs. King Emperor* AIR 1936 PC 253, the Judicial Committee observed that the principle applied in *Taylor vs. Taylor* (1876) 1 Ch.D 426 to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that “it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves”.

Later a Constitution Bench in a judgment reported as A.R. Antulay Vs. Ramdas Srinivas Nayak, (1984) 2 SCC 500, held as follows:

“22. Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from *Taylor v. Taylor* (1876) 1 Ch.D 426; *Nazir Ahmad v. King-Emperor* AIR 1936 PC 253 and ending with *Chettiam Veettil Ammad v. Taluk Land Board* Air 1979 SC 1573, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

Therefore, in view of the above, once the Statute mandates the State Government to make admissions to all private health sciences educational institutions on the basis of common entrance test, all other methods of admission stand excluded. It is the State Government, which has the jurisdiction to choose the process of common entrance test or the qualifying examination, as the case may be. In terms of the Regulations of the Medical/Dental Council of India, the entrance test is required to be conducted, if the qualifying examination is conducted by different Boards in the same State and the admissions are in more than one college. The relevant Regulations of the Dental Council of India read as under:

“ADMISSION, SELECTION AND MIGRATION:

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II. Selection of Students: The selection of students to dental college shall be based solely on merit of the candidate and for determining merit, the following criteria shall be adopted uniformly throughout the country:

1. In States having only one Dental College and one University board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;
2. In States, having more than one university/board/examining body conducting the qualifying examination (or where there are more than one dental colleges under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;
3. Where there are more than one college in a State and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

4. A competitive entrance examination is absolutely necessary in the cases of institutions of All India character;

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Since in Punjab, there are multiple Boards conducting qualifying examination and also multiple Medical Institutes conducting degree courses, the common entrance test is the only mode for admission in terms of the Regulations of the Medical/ Dental Council of India.

In view of the above discussion, we do not find any patent illegality or irregularity in the order passed by the learned Single Judge, which may warrant any interference by this Court in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

22.07.2015
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(LISA GILL)
JUDGE