

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17872 of 2016 (O&M)
Date of decision: September 28, 2016

Navjot Kaur

.. Petitioner

v.

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashok Sharma Nabhewala, Advocate for the
petitioner(s).

Mr. Piyush Bansal, Deputy Advocate General, Punjab.

Mr. Gautam Pathania, Advocate for Baba Farid University of
Health Sciences.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Advocate for the applicant in
CM No. 11448 of 2016.

...

Rajesh Bindal J.

1. This order will dispose of two petitions bearing CWP Nos.
17872 and 18553 of 2016, as common questions of law and facts are
involved.

2. The issue is regarding admission to MBBS course under NRI
quota.

CWP No. 17872 of 2016

3. The pleaded case of the petitioner is that father of the petitioner
is NRI. She passed her 10+2 examination from Punjab School Education

Board in March, 2015 and seeking to get admission in MBBS course against NRI quota.

CWP No. 18553 of 2016

4. The petitioner claims himself to be NRI. He obtained Secondary School Diploma from Middle Field Colligate Institute in April, 2016 and is aspiring to get admission in MBBS course against NRI quota.

Arguments on behalf of the petitioners

5. Learned counsel for the petitioners submitted that State of Punjab issued notification on 18.3.2016 providing for procedure for admissions to Under-Graduate Degree courses, i.e., MBBS/BDS for the year 2016 in the Government & Private Medical/Dental Institutes in the State of Punjab. Clause 3 thereof specifically provided that admission to the MBBS/BDS courses in all the categories except NRI shall be based on marks obtained in Punjab Medical Entrance Test (for short, 'PMET')- 2016. Admission for NRI candidates shall be based on merits in qualifying examination in terms of the judgment of this court in LPA No. 1448 of 2015 —Jagraj Singh Dosanjh and others v. Krishma Bansal and others, decided on 11.12.2015. Prospectus were issued by Baba Farid University of Health Sciences (for short, 'the University') giving schedule for filing of applications and conduct of PMET-2016. Subsequently superseding the earlier notification dated 18.3.2016, another notification was issued by the State on 10.6.2016, which provided that all admissions of Government quota seats in Government and private institutions shall be based on merit of PMET-2016. All admissions in private/minority institutions in management quota seats including NRI and minority quota seats shall be based on merit of National Eligibility-cum-Entrance Test (for short,

'NEET'), 2016 as per Ordinance dated 24.5.2016 issued by the Government of India. It further provided that admission to NRI seats of Government Medical Colleges shall be based on merit of a separate entrance test to be conducted by the University.

6. He further referred to Indian Medical Council (Amendment) Ordinance, 2016 dated 24.5.2016, vide which Section 10D was added in Indian Medical Council Act, 1956 (for short, 'the 1956 Act'). Referring to the proviso thereto, he submitted that condition of passing of competitive examination, namely, PMET or NEET was not applicable for NRI quota seats, in case the State had not opted for such examination. In the earlier notification dated 18.3.2016, the State had not opted for any test for NRI quota seats. He further submitted that in reply filed in CWP No. 18553 of 2016, the State has referred to the order dated 28.4.2016 passed by Hon'ble the Supreme Court in Writ Petition (C) No. 261 of 2016—Sankalp Charitable Trust and another v. Union of India and others and the notification dated 21.12.2010. The same has no relevance in the case in hand as the State had opted for not holding competitive examination.

7. He further submitted that NRI quota does not fall in any category, rather, a special class. He referred to Unni Krishnan J. P. and others v. State of A. P. and others, (1993) 4 SCC 111; T.M.A. Pai Foundation v. State of Karnataka, 1994(1) SCT 313 and P.A. Inamdar and others v. State of Maharashtra and others, (2005) 6 SCC 537 to submit that in none of the aforesaid judgments by Hon'ble the Supreme Court, it was opined that any test could be held for admission against NRI quota, hence, the clause in the notification providing for entrance test as a condition precedent for admission to MBBS/BDS courses against NRI seats be

quashed and the petitioners should be directed to be admitted only on the basis of marks obtained in the qualifying examination.

Arguments on behalf of the State

8. Learned counsel for the State submitted that NRI quota is merely one of the categories, otherwise the term used in all the provisions and the notification issued by the Government is that all admissions, which certainly will include the seats against any quota including NRI quota. The amendment in the eligibility conditions and the procedure was required to be made in view of the order passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), wherein it was directed that notification dated 21.12.2010 is operative, hence, admissions be made in terms thereof. The aforesaid notification clearly provided that for all admissions, there has to be a single test. The order passed by Hon'ble the Supreme Court clearly provided that the same was notwithstanding any order passed by any court earlier with regard to not holding any NEET. Referring to the proviso to Section 10D of the 1956 Act, as added vide Ordinance dated 24.5.2016, learned counsel for the State submitted that the only exception carved out was in respect of State Government seats, whether in a Government Medical College or in a private Medical College. There was no other exception carved out. The provisions made in the notification dated 10.6.2016 were strictly in consonance therewith.

9. He further submitted that the petitioners were not even applicants. The writ petitions are highly belated as the notification providing for admission against NRI quota on the basis of NEET or a test to be conducted by the University was provided in the notification dated 10.6.2016, whereas CWP No. 17872 of 2016 was filed on 29.8.2016 and

CWP No. 18553 of 2016 was filed on 5.9.2016. He further submitted that as per schedule of counselling and on account of non-availability of the eligible candidates for admission against NRI seats, those were converted into general category and have already been filled up.

Arguments on behalf of the University

10. Learned counsel for the University, while adopting the contentions raised by learned counsel for the State, submitted that in view of the order passed by Hon'ble the Supreme Court, there is no choice but to grant all admissions on the basis of competitive entrance examination. The proviso to Section 10D of the 1956 Act only granted exemption for the session 2016-17 in respect of Government seats and none else.

11. Mr. Rajiv Atma Ram, learned senior counsel appearing in CM No. 11448 of 2016 filed on behalf of Soumya Aggarwal for being impleaded as a respondent, assisted the court on the legal issue. He submitted that as per notification dated 18.3.2016, the conditions were put in terms of the judgment of this Court in Jagraj Singh Dosanjh and others' case (supra), as was the legal position at that time. In case of any dispute, clause 16 of the aforesaid notification provided for an appellate authority, namely, Director, Research and Medical Education. The petitioners, if aggrieved, could have availed of that remedy. He further referred to clause 20 of the notification providing for detailed conditions for admission against NRI seats. The eligibility of the candidates was to be determined by the University by issuing eligibility certificate. In case, any of the seat in that category remains vacant, the same was to go to general category. He further submitted that all the seats in NRI quota having not been filled up on account of non-availability of eligible candidates, those were converted into

general category and have already been filled up. He further referred to the prospectus issued by the University, where the last date to complete the process for filing the applications for appearance in PMET-2016 was 4.5.2016. For NRI quota, the candidates were required to apply separately for provisional eligibility/equivalency certificate. He further submitted that vide judgment in Christian Medical College Vellore and others v. Union of India and others, (2014) 2 SCC 305, the notification dated 21.12.2010 regarding common entrance test for all admissions was held to be bad. Review against that judgment was allowed by Hon'ble the Supreme Court in Medical Council of India v. Christian Medical College Vellore and others, JT 2016 (4) SC 118. Thereafter vide order dated 28.4.2016 passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), schedule for NEET-2016 was fixed, as the notification dated 21.12.2010 issued by Medical Council of India had become operative. The order was notwithstanding any order passed by any court earlier with regard to not holding of NEET. The notification dated 21.12.2010 clearly provided that all admissions to MBBS course shall be based solely on marks obtained in NEET. Thereafter, Ordinance dated 24.5.2016 was issued, vide which Section 10D was added in the 1956 Act. Thereafter, vide notification dated 10.6.2016, the State of Punjab modified the conditions and procedure for admission in line with the judgment of Hon'ble the Supreme Court. NEET was conducted on 24.7.2016. The result was declared on 17.8.2016. He further submitted that simultaneously with the issuance of notification on 10.6.2016 providing for new procedure for admission, procedure for admission against NRI quota was also uploaded on the website. For admission in Government and private colleges, the candidates were

required to pass entrance test, as conducted by the University. The last date for submission of applications was 5.8.2016. The test was to be conducted on 9.8.2016. In fact, after the test, even the result was declared on the same date. As against 48 seats, only 37 candidates appeared and 7 candidates passed the same. For NRI quota seats in private colleges, the applications could be filed upto 1.9.2016, after the result of NEET-2016 had been declared. The candidate was also to produce eligibility/equivalency certificate. The writ petitions were filed in August end and September, 2016 without there being any pleading that the petitioners ever appeared in any of the test or filed application with any authority.

12. Learned counsel further referred to the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (for short, 'the 2006 Act'), which provided for a competitive examination for admissions. The vires of the same was upheld by Full Bench of this Court in Navdeep Kaur Gill v. State of Punjab, 2014(3) SCT 110.

13. It was further argued that Division Bench judgment of this Court in Jagraj Singh Dosanjh and others' case (supra) was delivered at the time when notification dated 21.12.2010 had been quashed by Hon'ble the Supreme Court. Later on, the judgment was reviewed in Medical Council of India v. Christian Medical College Vellore and others (supra). Special Leave Petition against the Division Bench judgment of this Court in Jagraj Singh Dosanjh and others' case (supra) is pending before Hon'ble the Supreme Court. As a consequence, the notification dated 21.12.2010 became operative and in terms thereof, all admissions were to be made on the basis of common entrance test. He further submitted that reliance was

also placed therein on a Division bench judgment of Karnataka High Court in Basave Shwar Vidya Vardhak Sangha and another v. Medical Council of India, New Delhi, 2015 ILR (Karnataka) 2891, in which the circular dated 16.1.2015 issued by Medical Council of India had been quashed. The circular was in fact later on withdrawn on 18.9.2015. The circular dated 16.1.2015 provided that all admissions made in NRI category shall be on merit, which shall be determined through a common entrance test. He further referred to a subsequent Division Bench judgment of Karnataka High Court in Writ Petition Nos. 44731-44732 of 2016—Karnataka Professional Colleges Foundation and another v. The Medical Council of India, decided on 15.9.2016, wherein taking note of the subsequent amendment and the orders passed by Hon'ble the Supreme Court, it was opined that notification dated 21.12.2010 was operative and as a result NEET was compulsory for all admissions to MBBS course.

14. He further submitted that in an application filed before Hon'ble the Supreme Court, vide order dated 11.5.2016 in IA No. 5 of 2016 in Writ Petition (Civil) No. 490 of 2014—Vigyan Bharati Trust v. Union of India and others, it was clarified that the petitioner-institute therein shall be at liberty to select NRI students, who have passed NEET examination for the academic year 2016-17. He further referred to a subsequent order dated 9.5.2016 passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), wherein the applications for modification of the order were dismissed. It was clearly directed that only NEET would enable the students to get admission in MBBS/BDS courses. He further referred to the order dated 22.9.2016 passed by Hon'ble the Supreme Court in Contempt Petition (C) No. 584 of 2016 in CA No. 4060 of 2009—State of

Madhya Pradesh v. Jainarayan Chouksey and others — directing that admission to all medical seats shall be as per centralised counselling done by the State Government and none else.

Response on behalf of the petitioners

15. In response, learned counsel for the petitioners submitted that even Section 5(5)(c) of the 2006 Act provides that all admissions against NRI quota seats shall be made only on the basis of 10+2 examination. In view of that, there was nothing wrong in the notification dated 18.3.2016 issued by the State earlier. Merely because the petitioners have not filed applications will not take away their legal right to seek admission as the stand is that the candidates seeking admission against NRI quota cannot be subjected to any entrance examination. When the writ petitions were filed, the process for admission was still in progress, hence, there is no delay.

16. Heard learned counsel for the parties and perused the paper book.

Discussions

17. The primary grievance of the petitioners is that for the purpose of admissions to MBBS course against NRI quota seats, there should not be any entrance test and admissions should be made only on the basis of marks obtained in the qualifying examination.

18. Medical Council of India carried out amendments in the Regulations on Graduate Medical Education, 1997 vide notification dated 21.12.2010 in Chapter 2 thereof providing for “Admission to the Medical Course-Eligibility Criteria”. NEET was made compulsory. It further provided that there would be a single eligibility-cum-entrance examination, namely, “National Eligibility-cum-Entrance Test for admission

to MBBS course”. Minimum 40% marks are to be secured in each paper of NEET. It specifically provided that all admissions to MBBS course within the respective categories shall be based solely on marks obtained in NEET. The validity of the aforesaid amendment was challenged before Hon'ble the Supreme Court and it was struck down in Christian Medical College Vellore and others' case (supra). The review petition was filed. Hon'ble the Supreme Court, vide order dated 11.4.2016 accepted the review petition, re-called the earlier judgment in Christian Medical College Vellore and others' case (supra) and directed the matter to be heard afresh. Subsequent thereto, the writ petition was filed before Hon'ble the Supreme Court praying for conducting the NEET for admission to MBBS course throughout the country for the academic session 2016-2017. The same was disposed of vide order passed in Sankalp Charitable Trust and another's case (supra). Schedule for conducting the NEET was prescribed on the basis of stand taken by learned counsel or the respondents appearing therein. It was noticed that examination shall be held in pursuance to the notification dated 21.12.2010 issued by Medical Council of India and Dental Council of India. Hon'ble the Supreme Court further clarified that “notwithstanding any order passed by any court earlier with regard to not holding NEET, this order shall operate”. The stand taken by some of the counsels, who were representing the parties, but were not impleaded as respondents in the writ petition under consideration before Hon'ble the Supreme Court, it was clarified that the earlier judgment in Christian Medical College, Vellore and others' case (supra) striking down the notification dated 21.12.2010 having been re-called, the said notification had become operative. Subsequently, interim application was filed in Vigyan Bharati Trust's case (supra) with reference

to admission against NRI quota seats. The same was disposed of by Hon'ble the Supreme Court on 11.5.2016 by passing the following order:

“The issue is with regard to the filling up of 15 per cent seats under N. R. I. quota.

It is clarified that it will be open to the petitioner-Institute to select such N.R.I. students who have passed NEET examination for the academic year 2016-17”.

19. Thereafter, number of applications were filed by private medical colleges and also by some of the States seeking modification of the order dated 28.4.2016 passed in Sankalp Charitable Trust and another's case (supra). The same were disposed of on 9.5.2016 in Association of Management of Unaided Private Medical & Dental College and another v. Union of India and others, 2016(3) SCT 113, with the following observations:

“6. In recent Constitution Bench judgment dated 2nd May, 2016, in *Modern Dental College & Ors. v. State of M. P. & Ors. in Civil Appeal No. 4060 of 2009* etc., the stand of the private medical colleges (including minorities) that conducting of entrance test by the State violated right of autonomy of the said colleges, has been rejected. The State law providing for conducting of entrance test was upheld, rejecting the contention that the State had no legislative competence on the subject. At the same time, it was held that the admission involved two aspects. First, the adoption of setting up of minimum standards of education and coordination of such standards which aspect was covered exclusively by Entry 66 of List I. The second

aspect is with regard to implementation of the said standards which was covered by Entry 25 of List III. On the said aspect, the State could also legislate. The two entries overlap to some extent and to that extent Entry 66 of List I prevailed over the subject covered by Entry 25.

7. *Prima facie*, we do not find any infirmity in the NEET regulation on the ground that it affects the rights of the States or the private institutions. Special provisions for reservation of any category are not subject matter of the NEET or rights of minority are in any manner affected by NEET. NEET only provides for conducting entrance test for eligibility for admission to the MBBS/BDS course.

8. We thus, do not find any merit in the applications seeking modification of order dated 28th April, 2016.”

20. A perusal of the aforesaid order shows that Hon'ble the Supreme Court found that there was any infirmity in NEET regulations on the ground that it affects the rights of the States or the private institutions.

21. Vide order dated 22.9.2016, passed in Jainarayan Chouksey and others' case (supra), Hon'ble the Supreme Court, while observing that mandate of the earlier judgment was to hold centralised entrance test followed by centralised state counselling by the State to make it a one composite process, directed that all medical seats shall be filled by centralised counselling only by the State Government and none else.

22. After the order was passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), vide Ordinance dated 24.5.2016, the 1956 Act was amended. Section 10D was added. It clearly

provided that there shall be a uniform entrance examination for admission to all medical educational institutions at the undergraduate level and post-graduate level. Proviso thereto provided that provisions with regard to uniform entrance test shall not apply for the academic year 2016-17 in respect of State Government seats (whether in Government medical college or in a private medical college), where such State had not opted for such examination.

23. As there were clear directions by Hon'ble the Supreme Court to conduct all admissions in MBBS/BDS courses for the year 2016-17 on the basis of merit in NEET, the State, in supersession of earlier notification dated 18.3.2016, issued fresh notification on 10.6.2016. It was provided in the aforesaid notification that all admissions against Government quota seats in Government and private institutions shall be based on merit of PMET-2016. All admissions in private/minority institutions in management quota seats including NRI and minority quota seats shall be based on merit of NEET-2016. Admission to NRI seats of Government Medical Colleges was to be based upon merit of a separate entrance test to be conducted by the University. Specific reference was made to Ordinance dated 24.5.2016 issued by Government of India amending the 1956 Act.

24. The circular dated 16.1.2015 was issued by Medical Council of India directing that from the academic year 2015-16 onwards, all admissions in NRI category shall be made on merit determined through common entrance test. Division Bench of Karnataka High Court in Basave Shwar Vidya Vardhak Sangha and another's case (supra) opined that the circular was not sustainable in view of earlier judgments of Hon'ble the Supreme Court on the issue. Subsequently, the aforesaid circular was withdrawn by

Medical Council of India on 18.9.2015, after the judgment of Karnataka High Court was upheld by Hon'ble the Supreme Court by dismissing SLP No. 16229-16230 of 2015 on 6.7.2015. The Division Bench judgment of this Court in Jagraj Singh Dosanjh and others' case (supra) had lost significance in view of the later order passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), where it was specifically ordered that notwithstanding any order passed by any court earlier with regard to not holding NEET, that order was to operate. In Jagraj Singh Dosanjh and others' case (supra), this court had opined that it was not mandatory for NRI to appear in PMET-2016 for securing admissions in MBBS course and they could be admitted on the basis of marks in the qualifying/equivalent examination in terms of the provisions of the 2006 Act. It was further noticed that requirement of NRI students to appear in PMET was only because of circular dated 16.1.2015 issued by Medical Council of India, which was later on withdrawn on 18.9.2015. It further clarified that it will not be necessary for NRI students to appear in PMET or common entrance test unless there is a legislation to that effect by the Central Government or the Medical Council of India, as the case may be. Undisputedly, subsequent thereto, with the review of the earlier judgment in Christian Medical College, Vellore and others' case (supra) striking down the notification dated 21.12.2010 providing for common entrance test and amendment of the 1956 Act by adding Section 10D therein, new provisions and regulations have come in force.

25. Thereafter, the issue came up for consideration before a Division Bench of Karnataka High Court in Karnataka Professional Colleges Foundation and another's case (supra), wherein the effect of

amendment in the Regulations vide notification dated 21.12.2010, which came into force after the order passed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra) on 28.4.2016, reviewing the earlier judgment in Christian Medical College, Vellore and others' case (supra), was considered with reference to seats in NRI quota. Another issue considered was whether in view of various orders passed by Hon'ble the Supreme Court directing all admissions on the basis of NEET, High Court should pass any order, which may result in diluting the orders passed by Hon'ble the Supreme Court. Noticing Regulation 5(5) Clause-V and the amendment carried out vide notification dated 21.12.2010, which provided that "all admissions to MBBS course within the respective categories shall be based solely on the marks obtained in the National Eligibility-cum-Entrance Test" and referring to the subsequent orders passed by Hon'ble the Supreme Court, it was opined that diluting the requirement in aforesaid Regulation 5(5) Clause-V would mean violating the orders passed by Hon'ble the Supreme Court, which would be against the principles of judicial discipline.

26. We subscribe to the same view, while holding that all admissions to MBBS course in each of the category will have to be made on the basis of merit position in the competitive examination and not merely on the basis of marks obtained in the qualifying examination.

27. Further, we find merit in the contention raised by learned counsel for the respondents regarding the petitions being belated. The notification requiring even the candidates seeking admissions against NRI quota seats to appear in competitive examination was issued on 10.6.2016.

Last date for receipt of applications was 5.8.2016 for admission in NRI

category in Government/University colleges. The procedure required to be followed by candidates in that category was uploaded on the website. Separate test conducted by the University for admission against NRI seats was held on 9.8.2016, result of which was declared on the same date. For seats against NRI quota in private colleges, the last date for filing the applications was 1.9.2016 and NEET, as per the schedule fixed by Hon'ble the Supreme Court in Sankalp Charitable Trust and another's case (supra), were held on 1.5.2016 and 24.7.2016. The result thereof was to be declared on 17.8.2016. The petitions were filed on 29.8.2016 and 5.9.2016. The petitioners were not applicants in either of the categories before the cut-off date.

28. For the reasons mentioned above, we do not find any merit in the present petitions. The same are, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

September 28,2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No