

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

Civil Writ Petition No.18584 of 2016

Date of decision: 17.10.2016

Association of Educational Colleges

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks a writ in the nature of mandamus for filling up the vacant seats of Diploma in Education from the candidates whether belonging to Haryana State or other than Haryana State and further direction that seats remaining vacant of Science/Commerce/Vocational Education be converted into Arts stream seats.

It is the pleaded case of the petitioner that respondent no.2- Director, SCERT, Haryana had been authorized to conduct admissions of the said course and the prospectus (Annexure P/1) to that effect had been issued. In spite of counseling having been held for 3rd time by way of on line process belonging to three streams, the respondents had not converted vacant seats into Arts stream. Therefore, reliance was placed upon the terms of the prospectus which provided that there could be conversion if the seats remained vacant. The Clause regarding conversion in the prospectus (Annexure P/1) also provides that reserved seats can be converted if they are not filled up and the stand of State also is as such. The relevant part of the

prospectus reads as under:-

“Note:

“1. 15% seats are reserve for outside Haryana candidates. If the seats of outside Hayana remain vacant then these seats will convert in open category.

2. If the seats in Science stream remain vacant, these will be converted into Commerce Stream and vice versa.

3. If in all three- stream (Science, Commerce and Vocational Education) seats remain Vacant, these will be converted into Arts stream seats.

4. The detail of Institution wise seats is available on SCERT Haryana, Gurgaon website www.scertharyana.gov.in”

Resultantly, this Court had been approached for the necessary relief on 7.9.2016. At that point of time 6th round of counseling had been fixed for 14.9.2016 (Annexure P/3). Reliance was also placed upon the order dated 27.11.2015 of this Court in **Civil Writ Petition No.24189 of 2015-Rao Harlal Bohra Shiksha Samiti (Regd.) and others Vs. State of Haryana and another** (Annexure P/5) in which similar directions were issued for the academic sessions 2015-16.

The State in its reply pleaded that during the present session 2016-18, the State Government was of the opinion that conversion of seats remaining vacant into Arts stream should be effected during 7th round of counseling which could be held at the cost of the petitioner-Association. It has been further averred that during 6th round of counseling stations were allotted to 24348 candidates out of which admissions had been given to 12042 candidates only. 12306 candidates out of 24348 had been deprived of admission by the concerned Principals and the principals of the petitioner association had not shown any interest to give admission in their allotted colleges. It is also mentioned that as many as 372 seats were still lying

vacant under outside Haryana quota due to negligence on the part of these self financing institutions. The breakup of the total 7658 vacant seats was given which were required to be converted into open category during the proposed 8th round of counseling.

It was further pleaded that if a sum of ₹ 5 lakh is deposited by the association for filling up 7658 remaining vacant seats + 372 vacant seats for the candidates outside Haryana then the supplementary admission notice in the leading news papers for inviting fresh application forms from the candidates of Haryana and outside Haryana during the 7th round of counseling and conversion of streams will be made into Arts stream during 8th round of counseling. No further counseling would be held on the part of the State Government after 8th round of counseling. Reliance was also placed upon the order dated 27.11.2015 passed in CWP No.24189 of 2015 (Annexure P/5) by this Court. The relevant part reads as under:-

“This Court in **Hari Singh Nalwa Trust's case** (supra) has observed as under:-

“5. Even the decision not to fill up the seats from the reserved category which are not filled up does not appear to be fair. Issues of policy are normally left with the State to decide and if there is a policy taken that the reserved category shall not be transferred, then if a challenge is brought, there needs to be an answer as to why such a transfer shall not be possible or how it will affect the composition of the educational environment in the institutions. The answer cannot be merely that the policy does not allow the same. The reply begs the question of what it has to answer and does not address the true concern of the institutions to allow seats to be left vacant when they have

sufficient infrastructure to handle them. After all the students' strength of every college is assessed on the availability of infrastructure and if there are additional number of students, who could be admitted with the available infrastructure, it makes little sense to completely block any entry from the seats meant for reserved category, if they are not filled up for the benefit of general candidates. I will not state that the policy itself restricting a transfer to be bad but at least in this situation where there is an admitted position that 750 reserved seats are still lying vacant, it makes no sense to support such a situation.

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7. The learned senior counsel appearing on behalf of the petitioners states that they will absorb the expenses for publication for filling up the seats within a week by newspaper advertisement and carry out admissions within the time set by the court. I would accept the proposal as meaningful and direct that the State causes an advertisement to be issued at the cost of the petitioners for admission to D.Ed. Course for the Session 2014-15 before 12.12.2014 and carry out admissions for the seats which are still vacant firstly, for the reserved category within the State and if the seats are not filled up on the 1st day, to allow for admission to all the candidates under general category without reference to restriction regarding domicile or place of birth. The admissions shall be completed within a period of one week and the State may adopt usual procedure of a common admission and allocation of candidates to various colleges in the order of merit.

8. The writ petition is disposed of as

above.”

Keeping in view the fact that the State is also willing that the infrastructure be utilized and should not go waste, the present writ is disposed of subject to direction that the petitioners shall deposit a sum of ₹ 3 lacs within a period of five days from today. Then the respondent no.2 will take necessary action for issuing concerned advertisement for the session 2015-16 for the vacant seats. The admissions shall be completed thereafter within one week by following the usual procedure of common admission and allocation of the candidates to various colleges by way of merit. The respondents shall also ensure that the mandatory 110 study days are also fulfilled by the candidates who are given admissions in all institutes by ensuring that the said institutes hold extra classes for the students who are admitted now.”

On 29.9.2016, it was noticed that 7th round of counseling was to be done from 28.9.2016 to 30.9.2016 and the provisionally admitted candidates were to report on 7.10.2016 as per public notice issued on 28.9.2016. Resultantly the matter was kept for today and for filing of status report.

As per communication dated 15.10.2016 issued from the office of respondent no.2 to the office of Advocate General, Haryana now 7866 seats are still lying vacant. The Ist semester examinations have to commence in the last week of January, 2017 and as per Rule 2.2 (Appendix-2) of NCTE Regulations, 2014, 100 working days per semester exclusive of the period of examination and admission are mandatory.

Resultantly, keeping in view the above and the concession given by the State, the present writ petition is disposed of in the same terms as per the order dated 27.11.2015 passed in Civil Writ Petition No.24189 of 2015 subject to direction that the petitioners shall deposit a sum of ₹ 4 lakh within a period of four days from today.

Then the respondent no.2 will take necessary action for issuing concerned advertisement for the session 2016-18 for the vacant seats. The admissions shall be completed thereafter within one week by following the usual procedure of common admission and allocation of the candidates to various colleges by way of merit. The respondents shall also ensure that the mandatory 110 study days are also fulfilled by the candidates who are given admissions in all institutes by ensuring that the said institutes hold extra classes for the students who are admitted now.

October 17, 2016
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No