

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19640 of 2016

Decided on : 30.11.2016

Harshit Jindal

.... Petitioner

Versus

State of Punjab & others

.... Respondents

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

Present: Mr.Animesh Sharma, Advocate, for the petitioner.

Ms.Lavanya Paul, AAG, Punjab, for respondent No.1.

Mr.Gautam Pathania, Advocate, for respondent No.2.

Mr.Deepak Gupta, Advocate, for respondent No.3.

None for respondent No.4.

Mr.A.S.Manaise, Advocate, for respondent No.5.

G.S. Sandhawalia, J. (Oral)

Petitioner challenges the admission given to respondents No.3 & 5, under the reserved category of 'Children/ Grand Children of Terrorist Affected Persons' in the Punjab Medical Entrance Test, 2016.

It is the case of the petitioner that the application for admission against such categories was covered under Clause 18(vi) of the prospectus (Annexure P2) and there was reservation to the extent of 1% of the seats. It is the case of the petitioner that preference is to be given to persons who are killed in terrorist action. It is further the case of the petitioner that as per the list of categories and codes provided in the prospectus, children of persons killed in terrorist action would come under Clause 18. Respondent No.3-Panima had wrongly applied under Category 19 and therefore, has been wrongly considered for admission, over and

above the petitioner under Clause 18(vi), which provides for reservation, which reads as under:

“18. Reservation in Government Medical/ Dental Colleges:

xxxx xxxx xxxx

(vi) Children/Grandchildren of terrorist affected persons 1%

Children/Grandchildren of Sikh riot affected persons 1%

(In order of preference to the exclusion of next category)

(Preference shall be given to a candidate whose parent or guardian is killed in such situation-Guardian to be considered only in case neither parent was alive at the relevant time)

a. Persons killed in terrorist actions in Punjab/riots outside Punjab.

b. Terrorist/Riot affected/displaced persons”

It is not disputed that admittedly, the petitioner has secured 76.733811 marks whereas respondent No.3 has secured 84.5748276 and respondents No.4 & 5 have secured 96.996707 and 95.1590784 percentile in PMET-2016. Respondents No.3 to 5, thus, are higher in merit, as such, from the petitioner. It is on account of the wrong filling up of the application forms that the petitioner seeks admission at the cost of respondent No.3 who has been granted admission and the writ petition has only been pressed against her by the counsel.

It is the case of the petitioner that as per Clauses 4 & 12 of the prospectus, change could not be permitted and the application form had to be rejected for the candidate who is seeking admission if the reservation category is not indicated properly. Clause 4 & 12 of the prospectus read as under:

“4. An error in filling of ONLINE APPLICATION FORM may result in rejection of such an Application Form. Corrections in the information given by the candidate in the ONLINE

APPLICATION FORM shall not be permitted after conduct of PMET.

xxxx

xxxx

xxxx

12. Correct category must be filled carefully in the Online Application Form. No claim shall be allowed if category/categories are not indicated in Online Application Form. Only those candidates who claim reservation by filling category (ies) code in Online Application Form shall be considered for reserved seat.”

It is also a matter of record that the petitioner and the private-respondents are grandchildren of the persons who are terrorist affected and their grandparents were killed in terrorist action and come under Category 18. This would be clear from Annexure R3/1, which has been issued in favour of respondent No.3. Same reads as under:

“OFFICE OF SUB DIVISIONAL MAGISTRATE, BATHINDA

Ref.102/....

Dated: 30.05.2016

TO WHOM IT MAY CONCERN

This is certified that Panima Gard d/o Nisha Rani d/o Krishan Chand belong to terrorist affected family. Her grandfather Sh. Krishan Chand was killed in terrorist attack in 1991. This family has been issued a Red Card bearing No.8 dated 18.05.1991. This certificate is issued as per office record and instructions issued by the Punjab Govt.

Sd/- Sub-Divisional Magistrate

Bathinda.

Sd/- Deputy Commissioner,

Bathinda.”

Counsel for the petitioner has vehemently placed reliance upon the documents which are appended with the prospectus which depict category code 18 and category code 19, which provided reservation in respect of the children/grandchildren killed in terrorist activities on a

prescribed performa. Similarly, for the certificate in respect of the children/grandchildren of terrorist affected/displaced persons under category code 19. The said performa certificates read as under:

“CATEGORY CODE-18

CERTIFICATE IN RESPECT CHILDREN/GRANDCHILDREN
OF PERSONS KILLED IN TERRORIST ACTIVITY IN
PUNJAB

No. _____ Date _____

Certified that Mr./Ms. _____ Son/Daughter of
Sh. _____ R/o _____ was killed in terrorist activities in Punjab.
He/She was Father/Mother/Grand Father/Grand Mother/Guardian
of _____ (name of candidate)

(*Guardian will be considered only in case neither parent was
alive at the relevant time).

Date _____ D.C./G.A. to D.C. of the respective
District

(With seal)

CATEGORY CODE-19

CERTIFICATE IN RESPECT CHILDREN/GRANDCHILDREN
OF TERRORIST AFFECTED/DISPLACED PERSONS

No. _____ Date _____

Certified that Mr./Ms. _____ Son/Daughter of
Sh. _____ R/o _____ is terrorist affected/terrorism displaced
person. He/She was Father/Mother/Grand Father/Grand
Mother/Guardian of _____ (name of candidate)

(*Guardian will be considered only in case neither parent was
alive at the relevant time).

Date _____ D.C./G.A. to D.C. of the respective
District

(With seal)”

It is, accordingly, submitted that the petitioner should be given
admission, over and above respondent No.3, specifically, since she has

applied under Category 19, which pertains to Children/Grandchildren of Persons of Terrorist Affected/Displaced Persons, in view of the preference clause. It is, accordingly, contended that irrespective of merit, the petitioner would, thus, be entitled for admission, over and above respondent No.3.

The list of categories and codes providing the form which have been filed up reads as under:

Sr. No.	Category	Category Code
8	a) Children of persons killed in terrorist actions in Punjab.	18
	b) Children/Grandchildren of persons of terrorists affected/displaced persons.	19
	c) Children of persons killed in Sikh Riots outside Punjab	20
	d) Children/Grandchildren of Sikh riot affected/displaced persons	21

After hearing counsel for the parties, this Court is of the opinion that there is no dispute that the private-respondents and the petitioner, all belong to the same category, as such, since their grandparents had been killed in terrorist action. A perusal of the category and category codes would go on to show that against Serial No.8(a) regarding Category Code 18, there has been no mention of 'grandchildren of persons killed in terrorist action' and only mention has been made of 'children killed in terrorist action'. In such circumstances, if respondent No.3 had opted for Category 19 in the online form, it cannot be taken to her detriment, since there is no such provision under Serial No.8(a) pertaining to the 'grandchildren of persons killed in terrorist action'. Counsel for the said respondent was well justified in referring to Clause 14

of the prospectus, which reads as under:

“14. In case of any discrepancy or contradiction between the Government notification/s and the University instructions contained in the prospectus, the letter and the spirit of the notification/s shall be prevailing, however in academic matters, the University shall be the final authority.”

The above reading would go on to show that the spirit of the notification dated 10.06.2016 (Annexure P1) is to be prevailing in case of any discrepancy which is contained in the prospectus. The notification specifies Clause 18 as reproduced above where preference is to be given to wards of persons killed in terrorist action to which the respondent admittedly belongs.

Even otherwise, it has been held by the Apex Court in *Charles K. Skaria & others Vs. Dr. C. Mathew & others 1980(2) SCC 752* that the prospectus cannot be treated as an scripture, to have the force of law. The Apex Court was examining the question that whether a decision of the State Government, modifying the cut-off date which had been fixed in the prospectus was valid. The said decision of the State Government had been upheld by the Single Judge of the Kerala High Court. However, the Full Bench, in appeal, held that the marks of the Diploma test were to be received by 31.03.1979 and the acquisition of qualifications, subsequently, on the last date and the decision of the State Government, would have the effect of overriding Clauses 12 & 13(k) of the prospectus. Accordingly, it was held that a prospectus was not a scripture and the over-stress on literality undermines the substantiality of

the guidelines in the prospectus. Resultantly, the SLP's were allowed by giving the benefit to the 3 of the candidates who had been disqualified. It was held that decision of the State Government was never stated to be a *mala fide* move in the official exercise and there was nothing dubious, shady or unfair, by giving the benefits to the students of the Medical College, Trivandrum, whose results had been delayed and thus, they had been left out of the zone of consideration. It was further held that the prospectus itself provided the Government to modify the method as had been held by the Single Judge and therefore, the direction to the Selection Committee to take into consideration the diplomas, could not be held to be objectionable. Herein also, the relevant clause of the prospectus has been highlighted above, showing that the notification would prevail. Relevant portion of the judgment read as under:

“23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power than the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter was to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of

the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in Administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and an mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and commonsense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.”

It has been held by the Apex Court in **Dolly Chhanda Vs. Chairman, JEE 2005 (9) SCC 779** that if candidates lower in merit have been given admission only on account of the fact that the candidate higher in merit was not able to provide the requisite certificate, it would lead to injustice and sacrificing the merit. It has also been held that such technicalities should not weigh with the authorities while proceeding on

the issue of eligibility. The relevant part of abovesaid judgment reads as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

In the case of **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & another (2016) 4 SCC 754**, the same principle was followed by holding that the reserved candidate who had submitted the OBC Certificate after the cut-off-date fixed in the advertisement should not be denied consideration in a pedantic manner.

As noticed, admittedly, respondent No.3 is higher in merit and she has also submitted the requisite certificates whereby it has been clearly mentioned that her grandfather had been killed in terrorist action. In such circumstances, if the authorities have considered her application under Category 18, it cannot be held to be an illegal act, as such, which would

entitle her admission to be cancelled. In such circumstances, this Court is loath to interfere in the admission already granted.

Resultantly, in view of the above discussion, the present writ petition stands dismissed.

NOVEMBER 30th, 2016
s/ sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes