

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

CWP No.21076 of 2015
Date of Decision:30.03.2016

Shivdeep Attri

. . . .Petitioner

Versus

Baba Farid University of Health Sciences, Faridkot and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rajesh Garg, Sr. Advocate, with
Ms.Namarta Shergil, Advocate,
for the petitioner.

Mr.V. Ramswaroop, Addl. A.G. Punjab.

Mr.Nitin Kaushal, Advocate,
for respondent No.1.

Mr.B.B.S. Sobti, Advocate,
for respondent No.3.

Mr.Vikrant Sharma, Advocate,
for respondent No.4.

Mr.H.S. Hooda, Sr. Advocate, with
Mr.C.S. Singh, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J.

Vide Notification No.5/35/2014-5HB-III/559 dated 30.3.2015 [for short 'the Notification'], admissions to Under Graduate Degree Courses i.e. MBBS/BDS for the year 2015, in the Medical and Dental Institutes in the State of Punjab including Medical and Dental Institutes affiliated to private universities, were offered and the Baba Farid University of Health Sciences, Faridkot [for short 'the University'] was authorised to conduct the Punjab Medical Entrance Test-2015 [for short 'PMET-2015']. The

University was also authorised to conduct centralized counselling for admissions on the basis of marks obtained in PMET-2015. The petitioner applied under three categories i.e. General Category (Category Code 11), Backward Category (Category Code 12) and Handicapped Category (Category Code 16) and appeared in PMET-2015, held on 17.5.2015, under Roll No.511829, in which he secured 420 marks out of 800 and was at 17th rank in Orthopedically Handicapped category. After the declaration of result, counseling was scheduled and first two counseling's were held online. The petitioner was granted provisional admission in Dayanand Medical College, Ludhiana in the category of Orthopedically Handicapped. The petitioner deposited the course fee on 11.9.2015. The petitioner submitted a certificate of his disability, issued by Civil Surgeon, Hoshiarpur that he is suffering from congenital kypho-scoliosis, Deformity of Spine (upper limb), which was assessed to the extent of 50%. However, it is alleged that the petitioner was medically examined in terms of Clause 20(iv) of the Notification, which provides as under: -

“Physically handicapped/orthopedically handicapped only 3%.

The candidate under orthopedic handicap shall be admitted only if he/she has locomotors disability of lower limbs between 50% to 70% and with this disability he/she is otherwise found fit medically to pursue the concerned course by the Medical Board duly constituted by the Government and consisting of Heads of the respective Departments of three Medical Colleges at Patiala, Amritsar and Faridkot of the specialty concerned. In case the

candidates are not available then candidates with 40% to 50% disability may be considered.”

The Medical Board of the University opined that the petitioner may be examined by a Higher Medical Board involving a Neurology Surgeon and Spine Surgeon. The University requested the Director, PGIMER, Chandigarh vide letter dated 16.9.2015 to give suitable date for medical examination of the petitioner and other similarly situated candidates and the petitioner was asked to report for medical examination on 26.9.2015 at PGIMER, Chandigarh at 9:00 AM. The petitioner was examined by the Medical Board of PGIMER, which was constituted on 22.9.2015 comprising Dr. Aditya Aggarwal, Additional Professor, Department of Orthopaedics (Chairman), Dr. R.K. Kanojia, Additional Professor, Department of Orthopaedics (Member), Dr. Rajesh Chhabra, Additional Professor, Department of Neurosurgery (Member) and Dr. Rajiv Kumar, Chief Medical Officer, Staff Clinic (Convener). The PGIMER vide its report dated 26.9.2015 opined that the handicap percentage of the petitioner is 41% and progressive in nature. It is also opined that at present he is fit to carry on studies and able to perform duties of a Doctor.

At the time of notice of motion, issued on 1.10.2015, the petitioner was directed to continue with his course but the interim protection granted was made purely provisional and it was ordered that it would not create any right of equity to the petitioner and shall be subject to the final outcome of the petition.

In the reply filed by the University, it is averred that the selection of the petitioner for admission was provisional and he had

to appear for counseling with the receipt of fee and all other relevant documents and if after the counseling and medical, specially in case of handicapped candidate, found eligible, then his seat is confirmed but in case the candidate is not found eligible then the fee deposited will be refunded. It is further averred that the petitioner is suffering from progressive disability of his spine which may go upto 100% and make him totally unfit in life. It is further submitted that the University has found the petitioner to be not eligible because his disability is 41% as progressive which may increase at any stage.

In the reply filed by respondent No.2, it is also averred that the petitioner is permanently disabled due to 'Scoliosis', which is incurable and progressive in nature. It is also asserted that the petitioner is not suffering from lower limb disability whereas Clause 20(iv) of the Notification applies to the lower limb and not to the upper limb.

Respondent No.3, in its reply, has submitted that on 9.9.2015, the petitioner was examined by the Medical Board constituted by the University comprising of Dr. Rajneesh Garg, Professor, Department of Orthopaedics, Dr. Deepak Jain, Associate Professor, Department of Orthopaedics and Dr. Pankaj Mahindra, Associate Professor, Department of Orthopaedics. They found that the disability of the petitioner was 35% and non-progressive, which was less than the bar of 40% as provided in Clause 20(iv) of the Notification. Respondent No.4 referred to its report wherein, the disability of the petitioner was found to be 41%. Respondent No.5

was impleaded as a party during the pendency of the petition, who has made following averments in para No.4 of his reply: -

“That the petitioner has no cause of action against respondent No.5, Architpal Singh as the respondent No.5 was not given admission by the respondents No.1, 2 and 3 against the cancelled seat. It is submitted that the respondent No.5, Architpal Singh applied in All India Pre.Medical/Pre Dental Test 2015 (AIPMT 2015) conducted by CBSE Delhi vide Roll No.54001045 (Admit Card Annexure R-5/1) and qualified the test vide Result Card Annexure R-5/2. Respondent No.5 applied in Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar in Management Quota on the basis of his merit in AIPMT 2015. His merit rank was 68 in the merit list prepared by Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar vide list Annexure R-5/3. The counseling was conducted on 5.9.2015 vide Annexure R-5/4 and he was selected in MBBS course vide Annexure R-5/5. He deposited tuition fee of ₹6,60,000/- (Reference Annexure R-5/6) and also deposited college security, hostel security, hostel fee and other miscellaneous charges amounting to ₹1,45,500/- (reference Annexure R-5/7). The session started on 7.9.2015, he joined college and hostel on 7.9.2015 and continued to attend classes till 28.9.2015 (reference Annexure R-5/8). It is further submitted that respondent No.5, Architpal Singh applied in Pre Medical Entrance Test 2015 (PMET) conducted by Baba Farid University of Health Sciences, Faridkot vide Roll

No.500106 (Admit Card Annexure R-5/9). Result was declared on 1.9.2015 and Architpal Singh secured merit rank 711 in General Category (Annexure R-5/10) and the respondent No.5 appeared in physical counseling on 29.9.2015 and 30.9.2015 held by respondent No.1, Baba Farid University of Health Sciences, Faridkot vide Annexure R-5/11 and the respondent No.5 was offered a seat in MBBS in the General Category management quota in Dayanand Medical College and Hospital, Ludhiana on account of his merit rank 711 vide annexure R-5/12. After surrendering his MBBS seat in Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar, the respondent No.5 deposited fee of ₹6,60,000/- at the University fee counter vide Admission slip Annexure R-5/13 and respondent No.5 was issued admission order by the Principal of respondent No.3, Dayanand Medical College and Hospital, Ludhiana vide letter Ref. No/DMCH 5/1-2015 dated 30.9.2015 vide Annexure R-5/14 and the respondent No.5 joined the classes of MBBS course on 30.9.2015 and since then attending the classes regularly. The respondent No.5 is living in the hostel of respondent No.3 Dayanand Medical College and Hospital, Ludhiana. The respondent No.5 was not offered the seat in MBBS course by the respondents No.1, 2 and 3 against the cancelled seat of the petitioner. It is submitted that the respondent No.5 is unnecessarily impleaded as a party in this writ petition by the petitioner out of ulterior motive which has resulted in undue harassment and inconvenience to respondent No.5 as a

result of which the respondent No.5 is suffering in his studies. The petitioner has no cause of action against the respondent No.5. The writ petition is not maintainable as such the same is liable to be dismissed.”

Learned counsel for the petitioner has submitted that the petitioner is admittedly suffering from congenital kypho-scoliosis (spinal deformation), which has been assessed as 50% disability by the State Government. However, the said disability is reduced to 35% by the Medical Board constituted under Clause 20(iv) of the Notification, which has further been found to be 41% by the PGIMER in its report dated 26.9.2015 and the disease has been found to be progressive in nature. It is submitted that the petitioner's disability is within the prescribed norms i.e. more than 40% but his admission has been cancelled, holding him ineligible, on the ground that the disease is progressive, which is not a criteria laid down under Clause 20(iv) of the Notification and cannot be read as such against the petitioner for the purpose of holding him ineligible.

In the replication filed by the petitioner, a sort of allegation was also levelled against the member of the Medical Board constituted under Clause 20(iv) of the Notification of personal bias of Dr. Rajnish Garg, Head of the Orthopaedics Department, DMC, Ludhiana, on the ground that he wanted to adjust his daughter Avantika Garg, therefore, the percentage of his handicapped was reduced from 50% to 35%. In this regard, learned counsel for respondent No.3 has submitted that Avantika Garg was already admitted in the management quota and

respondent No.5 was also admitted in the management quota. It is rather argued that the petitioner is not entitled to admission because not only he is not suffering from deformity of lower limb, as prescribed under Clause 20(iv) of the Notification but also the disability suffered by the petitioner is not a locomotor disease and in this regard, he has relied upon a decision of a Division Bench of Madras High Court rendered in the case of **“P. Divya Vs. S.Kavitha”** 2013 (6) MLJ 225.

I have heard learned counsel for the parties and perused the record with their able assistance.

The admitted case of the parties is that the petitioner is suffering from congenital kypho-scoliosis. The petitioner would not get admission otherwise than the handicapped quota. It is also on record that a certificate issued by the State is of 50% disability of the petitioner due to the aforesaid disease, which has been found to be 35% by the Medical Board constituted by the University in terms of Clause 20(iv) of the Notification, which has further been found to be 41% by the PGIMER. The disease has been found to be progressive in nature. The admission of the petitioner has been cancelled being found ineligible, on the ground that his disease is progressive in nature, which may go upto 100%, making him totally incapacitated to work in future.

The issue is not only thus as to whether the word “progressive” can be used by the respondents for denying the admission to the petitioner as it is conspicuous by its absence in Clause 20(iv) of the Notification but the issue is also as to whether the petitioner is suffering from locomotor disability of lower limb?

In the case of **P. Divya (Supra)**, the candidate was suffering from spinal disability, which was not held to be a locomotor disease, which is defined as a disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. Otherwise also, Clause 20(iv) of the Notification recognizes the deformity of the lower limb whereas spine injury is nowhere could be termed as a lower limb injury or deformity as it is a part of the upper limb of the body. Hence, looking from any angle, there is no error in the order of the respondents, holding the petitioner ineligible for the purpose of admission. Consequently, the present petition is hereby dismissed and admission granted to the petitioner under the order of the Court is hereby cancelled with immediate effect.

30.03.2016*Vivek***(RAKESH KUMAR JAIN)
JUDGE**