

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

209

CWP-21227-2015

Reserved on : 08.09.2016

Decided on : 26.09.2016

Arun Kumar

... Petitioner

Versus

Guru Ravi Das Ayurved University and others

.. Respondents

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

Present : Mr.S.K.Sharma Budhladwale, Advocate
for the petitioner.

Mr.T.S.Chauhan, Advocate
for respondents No.1 and 2.

Mr.V.K.Kataria, Advocate
for respondent No.3.

G.S.Sandhawalia, J.

Petitioner challenges the order dated 21.07.2015 (**Annexure P/14**) passed by respondent No.2-*The Controller of Examinations, Guru Ravi Das Ayurved University, Jodhamal Road, Hoshirapur (Punjab)*. Vide said order, the respondent has cancelled the provisional admission granted to the course of Bachelor of Ayurvedic Medicine Course (in short- **BAMC**) on the ground that the petitioner had done 10+2 from the *Rural Institute of Open Schooling, Laxmi Nagar, Delhi* (in short-**RIOS**) and the same was not included in the approved list of *Council of Boards of School Education* (in short '**COBSE**'). Accordingly, RIOS was held to be a registered society as per letter dated 18.04.2013 and having not been established by an Act of Central/State Government. It was held not to be

recognized Board.

Pleaded case of the petitioner is that he had passed his Intermediate Certificate which equivalent to 10+2 in October-November, 2013 under Roll No.12000266 from RIOS which was affiliated with the Chhattisgarh State Open School (in short - CGSOS), Raipur. It was alleged that the same was established under the State Legislative Act and it was a Member of Council of Boards of School Education in India (COBSE). Accordingly, it was pleaded that on the relevant date, RIOS was affiliated with CGSOS. The petitioner appeared, and qualified 10+2 examinations in October-November, 2013. The respondent-University which conducted examinations in all Ayurvedic colleges in the State, had processed the case of the petitioner for admission under the NRI category. Petitioner had taken admission in the BAMS course with respondent No.3-College-*Shiv Shakti Ayurved Medicine Mansa*. He had deposited Rs.2,40,000/- on 27.11.2014 and Rs.5,000/- towards university registration fee and thereafter another sum of Rs.13,000/- was deposited on 09.01.2015 (Annexures P/3 to P/5).

The CGSOS had issued a notification notifying the equivalence of ROIS along with establishment of academic centres and conduct and declaration of examinations and the results by the RIOS. The certificates of equivalence were given by COBSE. The affiliation was cancelled by CGSOS for some time as per order 22.4.2013 (Annexure P/7). The name of RIOS appeared at Sr.No.14(a) below CGSOS, Raipur in the list of Member Boards/Council as per website of COBSE (Annexure P/6). The certificates issued by RIOS had been declared valid

for employment and valid for pursuing higher studies as per COBSE. The membership of ROIS was revived by order dated 24.09.2013 (Annexure P-10/B).

On account of show cause notice dated 28.04.2015 (Annexure R-1/3) having been issued, the Director of RIOS vide its communication dated 13.05.2015 (Annexure P/11) had intimated to respondent-University that it was a registered body with the Govt. of NCT, Delhi and had been granted membership of COBSE. In spite of that admission of the petitioner was cancelled on 27.05.2015 (Annexure P/12) on the ground that he had not passed 10+2 from the National Institute of Open Schooling (NIOS). The petitioner, thereafter, approached this Court in CWP-12882-2015 which was disposed on 09.07.2015 (Annexure P/13) that the respondent No.2 would take a decision therein within two weeks after production of documents by the petitioner. Thereafter, the impugned order was passed on 21.07.2015 (Annexure P/14) which is a subject matter of challenge.

In the written statement filed by the respondent-University, stand taken is that admission was made on the basis of the Entrance Test named as Punjab Ayush Entrance Test (in short -PAET). As per the eligibility criteria of notification dated 12.05.2011, the candidate had to pass 10+2 with Physics, Chemistry, Biology & English or its equivalent examination, from a recognized Institution/University before the time of counselling. Petitioner had been provisionally admitted in the BAMS course in 2014-15 with respondent No.3-college during counselling at college level. During checking of original documents, it came to the

notice that he had passed his Intermediate Certificate Examinations from RIOS. The same did not exist in the approved list of Member Boards/Councils of COBSE (Annexue R-1/2). The certificate issued could not be treated as valid and equivalent to 10+2.

A show-cause notice had been issued to the petitioner and he had been called for personal hearing but he did not report. Subsequent show-cause notice dated 15.05.2015 was issued and he had appeared on 20.05.2015 and thereafter earlier order dated 27.5.2015 had been passed. As per order dated 09.07.2015, a fresh decision was to be taken. The RIOS not being on the list of recognized boards as per the list of recognized boards of National Institute of Open Schooling (NIOS) was a basis for the cancellation of admission. The reference was made to the list of non-recognized Boards/Universities not considered for admission by NIOS (Annexure R-1/8). Reference has also been made to the list of recognized Universities/Boards/Bodies etc. by Kurukshetra University as equivalent to, 10+2 (Annexue R-1/9) to submit that RIOS does not exist in the list. Similar reference has also been made to the list of recognised board by the GNDU University which also did not show existence of RIOS (Annexue R-1/10). As per website of COBSE also (Annexue R-1/11), the RIOS did not figure in the list. Reference was also made to public notice (Annexue R-1/12) established by the NIOS wherein public had been put to notice that RIOS was not linked with the NIOS and the same was not responsible for any excess payment towards admission. It had been notified that learners are being cheated by overcharging, illegitimate fees through un-authorized agencies/Coaching Institutes and

the said notice also mentioned the name of three institutes including RIOS.

Resultantly, the impugned order was justified on the ground that the certificate was not equivalent to +2 certificate. The CGSOS was the member of CBOSE and could not grant membership to RIOS and only the CGSOS could have issued the certificate and thus, the admission had rightly been canceled.

In the written statement filed by respondent No.3, the plea taken by the petitioner was not opposed and it was only averred that admission had been granted as per the norms and had been cancelled by respondent-university after receiving instructions of the same.

Counsel for the petitioner has submitted that at the time of admission in the year 2014, the Institute was duly recognized. Reliance upon Annexure P/8 has been placed wherein it was shown as in the list of the recognized boards. Accordingly, it was submitted that subsequent cancellation could not be detriment to the petitioner as the relevant date would be 2013. Reliance has been placed upon the judgment of the Apex Court in *Suresh Pal Vs. State of Haryana, 1987(2) SCC 445* and judgment of this Court in *Ms. Neelam Devi and another Vs. Haryana Nurses Registration Council and others, 2010(2) PLR 323*. Accordingly, it was submitted that the admission of the petitioner which was cancelled again after one year of studies of professional course, was not justified.

The counsel for respondent No.2 accordingly, has placed reliance on the list of the non-recognized boards and the universities and submitted that an intentional effort has been exercised to mislead this

Court and RIOS was not competent to grant certificate. Therefore, the admission has rightly been cancelled.

After hearing learned counsel for the petitioner, this Court is of the opinion that the order passed by respondent is well justified after affording proper opportunity to the petitioner. As noticed, the show-cause notice had been issued and proper reply had been taken and opportunity of hearing had been granted, therefore, the petitioner as such cannot claim that the principle of natural justice has been violated in any manner.

The arguments of the petitioner is that RIOS was recognized and cancellation of the membership was restored on 22.4.2013 therefore it could grant its degree is without any justification. The respondents have placed sufficient material on record to show that in the list of recognized and non-recognized boards of secondary education and senior secondary examination, the name of RIOS does not find mention. Rather it has been specifically mentioned that RIOS mentioned at Sr.No.51 is amongst non-recognized boards/universities by the NIOS (Annexure R-1/8). Similarly, in the list of universities/boards recognized by the Kurukshetra University (Annexure R-1/9) for 10+2 examinations, the name of RIOS does not figure. Similarly, even the Guru Nanak Dev University does not recognize RIOS or equivalent board.

Rather perusal of the list of COBSE (Annexure R-1/11) would go on to shows that Chhattisgarh State Open School finds mention at serial No.14 but the list do not mention of recognition to RIOS as a member at serial No.14(a) as has been projected by the petitioner. Rather there is no mention of serial No.14(a). A specific denial has been made to

the veracity of Annexure P/8 to show that Chhattisgarh Board of Secondary Education & State Open School, Raipur, figured in the list (Annexure R-1/8) of Recognized and Non-recognized Boards of Secondary and Senior Secondary education at code No.2902 but RIOS did not figure.

Even otherwise, as per Annexure P/8 only membership has been granted by CGSOS and admittedly, the RIOS is situated outside the jurisdiction of State of Chhattisgarh. It is the case of the petitioner that he had passed from RIOS, New Delhi. The NIOS which is an autonomous organization under Department of School Education & Literacy, MHRD, Govt. of India. Home Resources Development Govt. of India had issued public notice regarding the activities of RIOS and that it had not authorized these institutions for establishment of these centres. The said facts have not been controverted by way of filing replication. Thus, the argument raised that the petitioner institute was duly recognized at the time of pass-out does not have any basis. The specific case of respondents is that the RIOS is not recognized and they have placed sufficient material on record to substantiate their claim, and not controverted it in any manner. The RIOS at Delhi is situated out side the jurisdiction of Chhattisgarh State therefore, the observations of the Apex Court in the ***Professor Yashpal and another Vs. State of Chhattisgarh and other*** **2005(5) SCC 420** would also come into play.

The Apex Court in the said judgment held that the provision which provided that private universities could have their study centres outside the State was extra territorial operation which was beyond the

competence of the State Legislature and only the Parliament alone was competent to make a law for the whole and any part of the territory of Punjab. The relevant portion reads as under:-

“41. Dr. Dhawan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extra territorial operation. [Section 2\(f\)](#) of the amended Act defines 'off-campus centre' which means a centre of the University established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. [Section 2\(g\)](#) defines "off-shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. [Section 3\(7\)](#) says that the object of the University shall be to establish main campus in Chhattisgarh and to have the study centres at different places in India and other countries. In view of [Article 245 \(1\)](#) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh legislature.

The judgment relied upon by in **Suresh Pal's** case (supra) would not be applicable in the facts and circumstances of the case, as it pertains to the case when the institute had enjoyed State recognition and during the pendency of the course, the same had been de-recognized and thus, the benefits were granted to the students.

Similarly, in the case of Neelam Devi (supra), the issue was regarding certificate issued by the University notified by the Chhattisgarh Government by passing the 2002 Act. Resultantly, it has been held that the degrees granted would not be held to be invalid as the University has

been established the Act of parliament. Resultantly, the benefit was granted in view of the observations by the Apex court that the State would take steps to affiliate the institute established by the private universities to the already existing State universities in Chhattisgarh.

The Apex Court in, **Central Board of Secondary Education Vs. Nikhil Gulati and another, 1998 (2) RSJ 153**, while declining to interfere under Article 136 of the Constitution, however, noticed that ineligible students were being promoted under Court orders which were instances of aberrations which should not be treated as precedents in future. That the Rule of Law was being put to mockery and the Rule of Man was being promoted, was put forth.

In similar circumstances, the Supreme Court in ***Mahatma Gandhi University and another vs. Gis Jose and others, 2009 (1) RSJ 438*** set aside the order of the High Court wherein, the student had secured only 53.3% marks in a qualifying examination against the minimum requirement of the cut off marks as 55%. The submission that the student had never misrepresented was rejected. It was held that once an irregular admission had been given in breach of Rules, she should not be allowed to complete the course and to write the examination and the same would be illegal. It was held that misplaced sympathy should not be shown in total breach of rules. The relevant observations read thus:-

*"9. The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in **Regional Officer,***

CBSE vs. Ku. Sheena Peethambaran and Others [(2003) 7 SCC 719]. In paragraph 6 of the Judgment, this Court observed as follows :

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions....".

10. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal."

Reliance can also be placed upon the judgment of the Apex Court in *The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and others*, 2012 (8) SCC 268, where it had been held that once the eligibility criteria is prescribed, it must be strictly adhered to and any dilution or tampering with it will work injustice on other candidates. In *Priyadarshini College of Computer Science and another vs. Manish Kumar and others*, 2013 (11) SCC 802 the Apex Court held that every candidate applying for a particular course is required to go through the instructions thoroughly including the eligibility criteria and after fulfilling the required conditions, fill in the application form and cannot claim any benefit of his own wrong.

A Division Bench of this Court in *Manmeet Sharma vs.*

State of Haryana and others, 2008 (4) SLR 498 also held that

admission could not be regularized where the eligibility itself was not there.

In the present case, as noticed above, the RIOS is not being set up by any Act or by Gazette notification and merely being a member of the CGSOS, the degree issued for, has been rightly held to be invalid. Resultantly, no fault as such can be found in the impugned order of the university.

Accordingly, there is no merit in the present writ petition and the same is dismissed.

[G.S.Sandhawalia]
Judge

26.09.2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No