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

Civil Writ Petition No.20468 of 2016

Date of decision: 9.11.2016

Shailesh Rathee

...Petitioner

Versus

Pt. B.D.Sharma Postgraduate Institute of Medical Sciences, Rohtak and
others

...Respondents

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

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate for the petitioner.

Mr. Ramesh Hooda, Advocate for respondents no.1 and 3.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana
for respondents no.2 and 4.

Mr. Harsh Aggarwal, Advocate for respondent no.5.

Mr. V.K.Dawar, Advocate for respondent no.6.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 26.9.2016 (Annexure P/7) whereby his admission in MBBS Course against the category II of Non-Resident Indian (NRI) seats had been cancelled on account of the fact that the original document namely Passport of his father had not been submitted before 20.9.2016. Resultantly, his admission was cancelled as he had failed to submit original documents and the passport till the said date. Accordingly, respondent no.5 had been given admission in the said course under the said category whereas respondent no.6 had been given admission under the category IV of NRI seats.

It is not disputed that thereafter in the 3rd counselling which was held on 29.9.2016, the petitioner has been given admission in Maharaja Agrasen Medical College, Agroha (Hisar) (hereinafter referred to as “MAMC, Agroha”) as he had then produced his father's passport. Vide interim order dated 30.9.2016, the petitioner had been allowed to continue with his studies at PGIMS, Rohtak wherein he had been initially granted admission.

The sole issue which now arises for consideration before this Court is that whether the petitioner is entitled to continue his studies at PGIMS, Rohtak where on account of failure of supply of original passport of his father in respect of his NRI status his admission was cancelled or whether he is liable to continue his studies at MAMC, Agroha.

It is not disputed that as per the terms of Chapter IV of prospectus (Annexure P/2) for the NRI category, admission is to be given against four categories. The 1st preference is accordingly to be given to actual NRI candidates who originally belong to the State of Haryana. Thereafter, children of NRI who originally belong to the State of Haryana. Third preference is to be given to the candidates who originally belong to an Indian State or Union Territory other than Haryana and fourth preference is to be given to the children of NRIs who originally belong to an Indian State or Union Territory other than Haryana. As per Clause (i) if sufficient numbers of eligible candidates under first category are available then they will be admitted first even if students under subsequent category are higher in merit. Relevant portion of the Prospectus reads as under:-

- 5) Admission against seats reserved for NRI candidates will be made in the following manner in order of priority.

Pardeep Kumar
2016.11.16 10:40
I attest to the accuracy and integrity
of this document
Punjab and Haryana High Court,
Chandigarh

Category I : Actual NRI candidates who originally belong to the State of Haryana.

Category II : Children of NRI who originally belong to the State of Haryana.

Category III: Actual NRI candidates who originally belong to an Indian State or Union Territory other than Haryana.

Category IV: Children of NRIs who originally belong to an Indian State or Union Territory other than Haryana.

- i) If sufficient numbers of eligible candidates under first category are available then they will be admitted first even if students under subsequent category are higher in merit.

xxx

xxx

xxx

Definition of NRI- “Non Resident Indian” is a person of Indian origin who is not a “resident”.

The categorization and the merit list and counselling schedule was accordingly preferred and it would be clear from Annexure P/3.

It is not disputed that the petitioner and respondent no.5 belong to category II being children of NRI who originally belong to Haryana State. Respondent no.6 belongs to category IV who is a child of a NRI who does not belong to State of Haryana. In such circumstances, inter se merit as such of the petitioner viz-a-viz respondent no.6 would not be considered for admission purposes and preference is to be given as per the category firstly.

As per schedule (Annexure R/5/2), the counselling for NRI category was slated for 15.9.2016. On the said date, the petitioner attended the counselling and was given provisional admission subject to submission of original documents and passport by 20.9.2016 (Annexure R/1/1). At that point of time, respondent no.5 did not opt for the admission though she was higher in merit than the petitioner having a score of 284 in NEET against the petitioner's score of 232.

It is the case of the petitioner that his father is a Marine Engineer and thus an NRI, therefore, he would fall under category II, children of NRI who originally belong to the State of Haryana. His father at that point of time i.e. on 15.9.2016 was at high seas and on account of his original passport being demanded he had also addressed an e-mail on 16.9.2016 (Annexure P/5) that he had left on 5.9.2016 and had joined the vessel which was enroute to Houston from Teesport (UK). It was not possible for him to come before 26.9.2016 since arrival at Houston was on the said date and therefore, the original passport could not be produced. It is on this account order dated 26.9.2016 (Annexure P/7) cancelling the provisional admission of the petitioner had been passed for the lack of original passport to show his NRI status being eligible under category II.

Resultantly, in the second stage of counselling as noticed respondents no.5 and 6 were duly given admission. Respondent no.5 chose to opt for admission at that stage in the MBBS course which would be clear from Annexure R/5/5 whereas respondent no.6 who belongs to category IV was shifted from the BPS Government Medical College for Women, Khanpur Kalan (Sonapat) to PGIMS, Rohtak Resultantly, the petitioner has approached this Court by filing the present writ petition.

Thereafter, the petitioner was granted admission on 29.9.2016 at MAMC, Agroha in the subsequent round of counselling.

Regarding respondent no.5 admittedly interse the petitioner, she is higher in merit and belongs to same category which would be clear from Annexure P/3 and there is no dispute with her.

Counsel for respondent no.6 who is the contesting candidate

Pardeep Kumar
2016.11.16 10:40
I attest to the accuracy and integrity
of this document
Punjab and Haryana High Court,
Chandigarh

accordingly submits that the petitioner was well aware of the terms of the provisional admission and therefore he cannot have any grouse as such on account of not producing the original passport which was the requirement of provisional admission.

Reliance has accordingly been placed upon the judgment of the Apex Court in **Chandigarh Administration & another Vs. Jasmine Kaur & others with Jessica Rehsi Vs. Chandigarh Administration** AIR 2015 **Supreme Court 34** to submit that the petitioner had taken a calculated risk/chance by subjecting himself to counselling and now he could not turn around and contend that the process of selection was unfair. Reliance has also been placed upon the order passed by the Apex Court in **Civil Appeal Nos.8067-8068 of 2015-S. Nihaal Ahamed Vs. The Dean, Velammal Medical College Hospital and Research Institute and others** decided on 30.9.2015 following the earlier view.

It is accordingly submitted that there is no cause of action as such which arises for the petitioner to approach this Court since he has been adjusted subsequently at MAMC, Agroha rightly.

After hearing counsels for the parties, this Court is of the opinion that the argument which has been raised by senior counsel for the petitioner is well justified. Reference has been rightly made to chapter IX of the prospectus (Annexure P/2) to show that which were the original certificates/documents were to be shown regarding the proof of NRI status. It is accordingly submitted that the original passport of the father was not the requirement. Chapter IX reads as under:-

“CHAPTER- IX

List of documents to be brought at the time of reporting before

Pardeep Kumar
2016.11.16 10:40
I attest to the accuracy and integrity
of this document
Digitally signed by Pardeep Kumar
Chandigarh

Admission Committee:

- The candidates, at the time of reporting must bring the following Original Certificates/ Documents/ Testimonials alongwith two sets of duly attested photocopies of these with them. Any candidate who fails to produce any of the required Certificate Document/ Testimonial at the time of reporting the institution, will forfeit his/her claim to admission.
- Matriculation/High School Certificate
- 10+2/Intermediate/Senior Secondary School Examination Certificate & Detailed Marks Card or equivalent certificate.
- Haryana Resident certificate if applicable.
- Equivalency certificate issued by Association of Indian Universities, New Delhi. if applicable.
- Conversion Certificate of grading to percentage of marks if applicable.
- Proof of NRI Status.
- Provisional Allotment letter.
- Original Receipt of Registration & Counseling Fee.
- Print out of Online Application form alongwith their locked Choice.

Note:

- All Original documents, 04 latest passport size photographs and 02 sets of attested photocopies of all applicable document/ testimonials/ certificates must be brought at the time of reporting.
- If the original certificate are not in Hindi/English, duly certified Hindi/ English version/translation of such certificate will be required.”

It has been specifically pleaded in the replication that at the time of counselling also the original income tax returns for the three years 2014-15, 2015-016 & 2016-17 (Annexure P/8-Colly) have been produced wherein specifically it has been mentioned that status of father of the petitioner is 'Non-Resident'. It has also been further mentioned that Employer Certificate from Lysaker, Norway (Annexure P/9) was also

produced to show that the petitioner's father was serving on the position of Chief Engineer with the overseas company. Reference has also been made to the certificate issued by the Oriental Bank of Commerce dated 16.9.2016 (Annexure P/10) to show that amount was transferred from NRE account of the father of the petitioner in favour of respondent no.3-University.

It is accordingly submitted that as per Chapter IX there was no specific requirement that the original passport of the father of the petitioner had to be produced and therefore, his father had left the country on 5.9.2016 in such circumstances. However, there was sufficient material to show that the petitioner belongs to category II of NRI. The said fact has not been denied by filing the rejoinder as such by the official respondents.

The passport is an important document of travel. As noticed the father of the petitioner was already at high sea at that point of time and it was not possible for him to produce the original passport as without the original passport the father could not travel legitimately overseas. Sufficient original material which was as per requirement of the prospectus is stated to have been shown to the counselling committee. In such circumstances, this Court is of the opinion that order dated 26.9.2016 (Annexure P/7) cancelling the admission was not as such justified in the facts and circumstances of the case.

The Apex Court in **Dolly Chhanda Vs. Chairman, JEE (2005) 9 SCC 779** has held that adoption of a highly technical and rigid attitude on account of non production of original document is not justified and the person who secured rank lower had been granted admission which would be detrimental to the candidate who was higher in rank.

Reliance can also be placed upon the judgment of the Apex Court in **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & another** (2016) 4 SCC 754 wherein the Single Bench of the Delhi High Court held that the candidate who had submitted OBC certificate after the last date mentioned in the advertisement was eligible for selection to the post under the OBC category which had been set aside by the Division Bench. The Apex Court allowed the appeal keeping in view the fact that such a rigid view was not to be taken.

As noticed above, respondent no.6 belongs to category IV of NRI and as per terms of the prospectus (Annexure P/2), the petitioner has preferential right as such. Very valid reasons have been given for not producing the original passport as noticed above. As per terms of the prospectus, producing of the original passport was not a precondition prescribed.

It has time and again been held by six Full Bench decisions of this Court that admission brochure or the prospectus has a force of law which is to be strictly followed. Reference can be made to **Amardeep Singh Sahota Vs. State of Punjab** 1993(4) S.C.T. 328, **Raj Singh Vs. Maharishi Dayanand University** 1994(2) S.C.T. 766, **Sachin Gaur Vs. Punjabi University** 1996(1) S.C.T. 837 **Rahul Prabhakar Vs. Punjab Technical University, Jalandhar** 1997(3) S.C.T. 526, **Indu Gupta Vs. Director of Sports, Punjab** 1999(4) S.C.T. 113 and **Rupinder Singh and others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others** 2001(2) S.C.T. 726. The relevant observations made in **Rahul Prabhakar's** case (supra) read as under:-

“7. A Full Bench of this Court in [Amardeep Singh Sahota v. State of Punjab](#), (1993) 4 SLR 673 : 1993(4) SCT 328 (P&H) (FB) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In [Raj Singh v. Maharshi Dayanand University](#), 1994 (4) RSJ 289 : 1994(2) SCT 766 (P&H) (FB) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in [Sachin Gaur v. Punjabi University](#), 1996 (1) RSJ 1 : 1996 (1) SCT 837 (P&H) (FB) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under [Article 226](#) of the Constitution of India.”

In such circumstances, this Court is of the opinion that the decision of the respondents to cancel the admission of the petitioner was not justified. The judgments relied upon by the counsel for respondent no.6 are not applicable to the facts and circumstances of the present case.

Accordingly, the present writ petition is allowed. Impugned order dated 26.9.2016 (Annexure P/7) whereby admission of the petitioner was cancelled is quashed. The petitioner is held entitled to continue his studies in MMBS Course at PGIMS, Rohtak and the ~~interim order dated~~

30.9.2016 is confirmed. Accordingly, respondent-University is directed to adjust respondent no.6 at MAMC, Agroha in place of the petitioner.

Needless to say that the respondent no.6 will be given benefit of attendance in the institute where-ever she has studied since she has taken admission in the institute affiliated under a common University.

At this stage, counsel for respondent no.6 submits that initially respondent no.6 had been given admission at BPS Government Medical College for Women, Khanpur Kalan (Sonapat) and if there is any vacant seat, the said respondent be allowed to continue her studies there.

The factual aspect is not clear whether any vacant seat still remains at the said institute at Sonapat. Yet in case there is any vacancy at the said college, the respondent-University shall consider the issue favourably if an appropriate representation is filed in this regard.

November 09, 2016
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No