

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.22808 of 2016

Tavleen KaurPetitioner(s)
Versus
Union of India & others ...Respondent(s)

(2) CWP No.23320 of 2016

Sunaina PrabhakarPetitioner(s)
Versus
Union of India & others ...Respondent(s)

(3) CWP No.23391 of 2016

Ashima GargPetitioner(s)
Versus
Union of India & others ...Respondent(s)

(4) CWP No.25832 of 2016

Vaibhav RanjanPetitioner(s)
Versus
Union of India & others ...Respondent(s)

(5) CWP No.27339 of 2016

Vipul KumarPetitioner(s)
Versus
Union of India & others ...Respondent(s)

Date of decision: 23.12.2016

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

Present: Mr.Amar Vivek, Advocate, for the petitioner(s)
(in CWP-22808, 25832 & 27339-2016).
Mr.Prantap Sharma, Advocate, for the petitioner
(in CWP-23391-2016).
Mr.Sanjeev Sharma, Advocate
and Mr.Sandeep Khunger, Advocate, for the petitioner
(in CWP-23320-2016).

Mr.Vinod Sharma, Advocate, for respondent No.1.

Mr.Sunil Kumar, Advocate, for
Mr.Vijay Pal, Advocate, for respondents No.2 & 4.

Mr.Suvir Sehgal, Advocate, for respondents No.3 & 5.

Mr.J.S.Toor, Advocate, for U.T.Chandigarh.

G.S.SANDHAWALIA, J. (Oral)

This judgment shall dispose of 5 writ petitions, bearing CWP-22808, 23320, 23391, 25832 & 27339-2016, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-22808-2016 titled *Talveen Kaur Vs. Union of India & others*.

Petitioner prays for conversion of 5 supernumerary seats to General Category, for conducting counselling for candidates in the waiting list, against the 5 supernumerary seats, with the respondent No.5-College, from the North/ Eastern States/ UT's.

The case of the petitioner is that after passing +2 examination, conducted by the Central Board of Secondary Education (CBSE), she had appeared in the JEE Mains Test, 2016, conducted by the CBSE in April, 2016, for admissions to the seats in the Engineering and the Architectural Courses. The petitioner had secured a rank of 15401. Similarly, petitioner-Vipul Kumar (in CWP-25832-2016) secured a rank of 14562, petitioner-Sunaina Prabhakar (in CWP-23320-2016) secured a rank of 17213, petitioner-Ashima Garg (in CWP-23391-2016) secured a rank of 20132 and petitioner-Vaibhav Ranjan (in CWP-25832-2016) secured a rank of 33073. It is the case of the petitioner that as per the information brochure (Annexure P3), there is a provision for 5 supernumerary seats in the Chandigarh College of Architecture-respondent No.5. The said seats are for the nominees of the North/ Eastern States/ UTs and the beneficiary States/UTs shall nominate the candidates on the basis of their qualifying the examination. It is their case that on account of the non-filling up of the

seats, they should be entitled for admission against the said seats as the same were going waste. Relevant portion of Clause 5.6.3 of the information brochure reads as under:

“Supernumerary seats for Nominees from North/Eastern States/UT's and for certain other agencies/Ministries

There are five seats allocated by the Ministry of Human Resource Development, Department of Higher Education, New Delhi. As per Govt. of India's letter F.No. 32-1/2015-TS.II dated 21.7.2015, seats allotted by the Ministry are for students of North Eastern States/UTs and for certain other agencies/Ministries and are supernumerary in nature and these seats are over and above the sanctioned strength. The beneficiary States/UTs shall nominate the candidates either on the basis of merit in the qualifying examination (10+2) or on the basis of an Entrance Test conducted by the beneficiary State/UT and appeared/qualify NATA or JEE (Main)-2016 conducted by CBSE. The condition of having obtained at least 60% marks in the qualifying examination will be observed if the nomination is made on the basis of merit in the qualifying examination alone, but in case of an Entrance Test forming the basis of nomination, no minimum percentage of marks in the qualifying examination will be insisted upon and mere pass in the qualifying examination along with NATA or JEE (Main)-2016 will be considered enough.

In respect of SC/ST candidates, the condition of having obtained at least 60% marks in the qualifying examination is not applicable. However, they must have passed the qualifying examination in a single sitting along with NATA or JEE (Main)-2016.

- i) Commencement of classes : 25.07.2016
- ii) Admission Fee : Fees payable at the time of admission is Rs.40,000/- and the same is payable to Joint Admission Committee JAC-2016”

It is, thus, their case that on account of the fact that classes had commenced in July, 2016 and the seats had not been filled, a representation

had been filed with the Principal of the College that the provisions of Rule 5.7.1 (c) should be invoked, to convert these seats into General Category and to conduct counselling, for the candidates next in the waiting list. It was mentioned that the last date fixed by the Government of India for the nomination of the beneficiaries was 31.10.2016 and on account of the lack of nomination, they should be granted admission. It is also the case of three petitioners (except Ashima Garg-in CWP-23391-2016) that they are studying in the Punjab Institute of Technology (Khunnimajra), affiliated to I.K.Gujral, Punjab Technical University, whereas Sunaina Prabhakar (in CWP-23320-2016) is studying in the School of Design, Manipal University, Jaipur. It is, thus, their case that since they are already pursuing their first semester in the course of Architecture, they should be granted admission as their representations have not been acted upon.

While issuing notice of motion, the Principal of the respondent-College had been directed to file an affidavit as to how these 5 seats were to be utilized on account of the fact that no nomination had been received from the Union of India, for the students from the North/Eastern States. In the affidavit filed by the Principal of respondent No.5-College, the stand was that the supernumerary seats were over and above the sanctioned intake strength of 40 students and admissions were only to be allowed by the Ministry of Human Resource Development and reliance was placed upon the letter dated 21.07.2015 (Annexure R1). It was further the case of the respondent-College that one Kritika Verma has already been adjusted against the Single Girl Child category, in view of the orders passed

on 24.10.2016 in LPA-2024-2016.

Thus, it is apparent that the 4 supernumerary seats continue to remain vacant. Normally, to utilize the infrastructure, the seats which are lying vacant are required to be filled up as per merit. However, much time has now gone by and as noticed, the classes had commenced in July, 2016 and therefore, at this stage, to operate the waiting list, would not be appropriate as it will not be possible for the students to catch-up and admission, at this stage, cannot be ordered, afresh. An affidavit has been filed by the Principal of the respondent-College that the institutions where the petitioners are studying, apart from Ashima Garg, have similar syllabus. This affidavit is in pursuance of the orders passed by this Court on 06.12.2016. The relevant portion of the affidavit dated 23.12.2016 reads as under:

“3. That the curriculum & scheme of examination of Design School Manipal University, Jaipur, is proposed as per Council of Architecture's Minimum Standard of Architectural Education 2008, so the subjects nomenclature are similar to Chandigarh College of Architecture syllabus but there be minor variation in the detailed content of some subjects.

4. (i) That the teaching scheme of examination 2012 of Punjab Technical University (PTU) 1st Semester is almost the same in subject nomenclature but some of the subjects have been clubbed together such as theory of Design and Building Material are part of Architectural Design and Building Construction, respectively.

(ii) History of Architecture subject is not introduced in PTU.”

In similar circumstances, for the earlier academic session also, the said issue had also arisen as to the utilization of the said seats for the academic session 2014-15. The Division Bench, vide its order dated

18.09.2015 in LPA-1372-2015 titled *Sukrti Bhutani Vs. Punjab University & others*, had taken into consideration the letter dated 21.07.2015 of the Union of India. It was also noticed that the petitioner-Sukrti Bhutani had taken her first semester examination from a private college and had appeared in the second semester from the respondent-College and therefore, there was no hindrance if she was to continue with her course. Relevant portion of the order reads as under:

“Mr. Amar Vivek, learned counsel appearing for respondents No. 1 to 3 has fairly conceded that a mistake while making admissions to the respondent No.3 College had occurred on account of the wrong information that came to be published in the Information Brochure-2014. It is now the undisputed position that the sanctioned intake in the five years degree course of B.Arch in respondent No.3 College is 40 seats and five seats reserved for States/Union Territories lacking in technical education facilities are over and above the said 40 seats. This is also evident from the memo dated 14.8.2015 (Annexure A-4) addressed by the Chandigarh Administration Technical Education Department to the Principal of respondent No. 3 College. It is mentioned therein that regarding the subject of reservation of seats in degree level technical courses for States/Union Territories lacking in such facilities and for foreign and other categories of students for academic Session 2014-15, that the College is free to admit students upto the sanctioned strength and that the nomination, if any, by the Government of India are over and above it.

Therefore, evidently a mistake had indeed occurred in the Information Brochure-2014 in counting the sanctioned strength of 40 seats for intake of students to the B.Arch. five years degree course by including 5 seats of the Ministry of Human Resource Development (Department of Secondary and Higher Education), Government of India for nominees of States/Union Territories deficient in technical education facilities. These in fact were to be excluded from the sanctioned strength of 40 seats as is evident from the Government of

India communication dated 21.7.2015 (Annexure A/1), wherein it has been clarified that the seats for States/Union Territories deficient in technical education facilities are over and above the sanctioned strength being supernumerary seats. Besides, the Chandigarh Administration, Technical Education Department has vide communication dated 14.8.2015 (Annexure A/4) addressed to the Principal of respondent No. 3 -College has further made it clear that the said College is free to admit students upto the sectioned strength.

The State ranking of appellant-Sukrti Bhutani is 179. She, therefore, admittedly falls in the merit of five seats of the 40 sanctioned strength, besides, admittedly, she has been provisionally admitted before the cut off date of 21.5.2015. The appellant has taken her first semester examination from a private college, besides, has appeared in the second semester examination from the respondent No. 3 College. Therefore, there is no hindrance in her continuing with the course to which she stands provisionally admitted.

In the circumstances, the impugned judgment and order dated 1.7.2015, insofar as it has been passed in Civil Writ Petition No. 10099 of 2015 is set aside. The appeal of appellant-Sukrti Bhutani is allowed and she shall continue in her B.Arch five years degree course in respondent No.3 College as she falls within the order of merit of five seats to which she stands provisionally admitted before the cut off date of 21.5.2015.”

Resultantly, keeping in view the above facts that there are 4 seats (one seat had been consumed by Kritika Verma) this Court is of the opinion that instead of operating the waiting list, the petitioners who are studying in the similar courses, in the first semester, be adjusted against the 4 vacant seats, available with the respondent-College, from the second semester, which is to commence in January, 2017. Resultantly, CWP-22808, 23320, 25832 & 27339-2016 are allowed, to that extent.

However, in CWP-23391-2016, nothing was brought to the notice of this Court that the petitioner-Ms.Ashima Garg is studying in the first semester in other similarly situated institute or doing a similar course and therefore, at this stage, she cannot be granted admission, even though she may be higher in merit. Resultantly, CWP-23391-2016 stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

23.12. 2016

sailesh

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