

CWP No.779 of 2016

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

**CWP No.779 of 2016  
Date of decision:19.05.2016**

The Punjab Private Self Financed Dental  
and Medical Colleges Association

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Manish Kumar Singla, Advocate,  
for the petitioner.

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

Ms. Shivangi Sharma, Advocate,  
for respondent No.2.

Mr. Nitin Kaushal, Advocate,  
for respondent No.3.

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**Rakesh Kumar Jain, J.**

The Punjab Private Self Financed Dental and Medical Colleges Association has challenged the validity of Clauses 2, 5, 7, 8, 21(iv) (Note-1) and 23(ii) of the notification dated 30.12.2015 issued by the Department of Medical Education & Research, Government of Punjab, which forms Part-B of the prospectus for admission to Post Graduate Medical/Dental Courses for the session-2016 issued by the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the

CWP No.779 of 2016

[ 2 ]

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“University”), concerning the Post Graduation in Dental Surgery (MDS), on the ground that they are contrary to the Dental Council of India Revised MDS Course Regulations, 2007 (hereinafter referred to as the “Regulations”) and the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and making of Reservation) Act, 2006 (hereinafter referred to as the “Act”) and has also prayed that the petitioner may be allowed to admit the students in the MDS course as per the Regulations and the Act.

Counsel for the petitioner has contended that the Government of Punjab has authorized the University to conduct Post Graduate Entrance Test-2016 (PGET-2016) not only for the 50% State quota seats but for all private quota seats as well, which is contrary to the Regulations, dealing with the selection of the students in postgraduate courses. According to the petitioner, in order to determine the academic merit amongst all the candidates, the University may adopt anyone of the procedures prescribed in Clause 2(i) to (iv) of the Selection of Postgraduate Students provided in the Regulations, whereas the notification only deals with one criteria of the entrance test.

It is further contended that in Clause 5 of the notification, it is provided that the seats shall be filled only by way of PGET-2016, whereas the 2<sup>nd</sup> proviso to Selection of Postgraduate Students of the Regulations, provides that fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent by the management of the institution on the basis of merit, which has to be determined as per Clause

CWP No.779 of 2016

[ 3 ]

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2(i) to (iv) of the Selection of Postgraduate Students provided in the Regulations.

It is also argued that it is provided in Section 5(iv) of the Act that an unaided private health sciences educational institution, other than a minority institution, may reserve up to fifty per cent seats of the total sanctioned intake as management category quota seats which can be filled up without there being any entrance test.

On the other hand, learned State counsel has contended that the Dental Council of India (DCI), vide its letter dated 07.05.2015, directed that no State shall admit the students in MDS course without their appearing/qualifying in respective competitive examination, i.e. PGET-2016, except where there is only one Dental College and only one affiliating University conducting the qualifying BDS examination.

It is further stated by the learned State counsel that since the Punjab State has more than one University imparting BDS Degree, therefore, it is mandatory to admit the students in MDS course on the basis of Common Entrance Test as per the Regulations.

Counsel for the University has submitted that the University has been created by the Punjab Act No.18 of 1998 and are bound to follow all the guidelines/directions issued to it by the State including the instructions prescribed by notification dated 30.12.2015, promulgated by the State of Punjab. The modalities/terms and conditions dated 30.12.2015 are a policy matter decided by the Punjab Government which are being followed by the University without any deviation.

CWP No.779 of 2016

[ 4 ]

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Counsel for the DCI has submitted that the DCI has been constituted under the provisions of the Dentist Act, 1948 for discharging its statutory obligations and the Regulations have been framed under Section 20 of the Dentist Act, 1948, which are binding and mandatory upon the State being statutory in nature but it is open to the State Governments to make their own rules and regulations for regulating the admission procedure in professional colleges including dental colleges as well as to constitute State Admission Committees.

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

In order to appreciate the respective arguments of the parties, it would be relevant to refer to the provisions of the notification dated 30.12.2015, which are under challenge, and also the relevant provisions of the Regulations and the Act, which are as under:-

**Notification dated 30.12.2015**

“2. The Governor of Punjab authorizes Baba Farid University of Health Sciences, Faridkot to conduct Punjab Post Graduate Entrance Test 2016 (PGET 2016) for 50% State Quota Seats and all seats in Private Colleges. However for NRI quota seats and admission to six month training in Ultrasonography (both batches i.e. July to December & January to June), admission shall be based on merit in the special test to be conducted separately by Baba Farid University of Health Sciences, Faridkot.”

“5. In order to be eligible for admission to a Post Graduate course, it shall be necessary for a candidate to obtain minimum of 50% marks in PGET-2016 or special test. However, in respect of candidates belonging to scheduled castes, scheduled tribes, other backward classes, the minimum marks shall be 40% or as notified by MCI/DCI. In respect of candidates with locomotor disability

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of lower limbs, the minimum marks shall be 45%.”

“7. All the seats in Government & Private Institutions shall be filled by centralized counselling.”

8. The process and schedule of counselling shall be decided by Baba Farid University of Health Sciences, Faridkot. The details shall be published by the BFUHS, Faridkot.”

“21. IV. Fee Structure in Private Colleges:

Fee structure for the Private Institutions for the year 2016 is as under (as per notification No.5/14/2015-5HB III/844 dated 07.05.2015):-

| <i>Sr. No.</i> | <i>Name of Course</i>  | <i>Fee per year (in Rs.)</i> | <i>NRI seats fee for full course in US \$</i> |
|----------------|------------------------|------------------------------|-----------------------------------------------|
| 1              | MD/MS (Clinical)       | 6,50,000                     | 1,25,000                                      |
| 2              | MD/MS (Basic Sciences) | 2,60,000                     | 20000                                         |
| 3              | PG Diploma             | 3,90,000                     | 30000                                         |
| 4              | MDS                    | 5,85,000                     | 1,00,000                                      |

Note 1: The fee will be collected on the spot by the Baba Farid University of Health Sciences, Faridkot on behalf of the respective institutions at the time of counselling and the same will be transferred to the respective institutions after completion of admission process.”

“23. Procedure for all seats remaining vacant after 2<sup>nd</sup> counselling including NRI seats.

- i) xxx xxx xxx xxx
- ii) For all left over seats in Private or Government Medical/Dental Colleges the counselling will be held in GGS Medical College, Faridkot with the same merit as that of PGET-2016. No fresh applications shall be called by individual institutions.”

“Regulations

SELECTION OF POSTGRADUATE STUDENTS

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- (1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.
- (2) For determining the academic merit, the university/institution may adopt any one of the following procedures both for P.G. Diploma and MDS degree courses.
  - (i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of universities in the same state; or
  - (ii) On the basis of merit as determined by a centralised competitive test held at the national level; or
  - (iii) On the basis of the individual cumulative performance at the first, second, third & Final B.D.S. Examinations, if such examinations have been passed from the same university; or
  - (iv) Combination of (i) and (iii)

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit.”

**“Section 2(e) & (h) and Section 5(4) of the Act**

2(e) “Management Category” means a category comprising such seats out of the sanctioned intake of a private health sciences educational institution, as may be allocated to the management of such institution by the State Government by notification in the Official Gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the *inter se* merit,

CWP No.779 of 2016

[ 7 ]

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determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test;

xxx                      xxx                      xxx                      xxx

(h) “Open Merit Category” means a category of seats comprising such seats out of the sanctioned intake of an institution, as may be allocated by the State Government by notification in the Official Gazette, for filling up those seats in a fair and transparent manner through a centralized receipt of applications and centralized counselling on the basis of the *inter se* merit, determined by a Common Entrance Test or Qualifying Examination, but excluding the seats of the management category or minority category:”

“5(4) An unaided private health sciences educational institution, other than a minority institution, may reserve up to fifty per cent seats of the total sanctioned intake as a management quota of seats.”

The grievance of the petitioner insofar as Clause 2 of the notification dated 30.12.2015 is concerned, it is in regard to words “and all seats in Private Colleges”. The case of the petitioner is that the 50% State quota seats may be filled up on the basis of the PGET-2016 but the remaining 50% seats should be allowed to be filled up by the management on the basis of the marks obtained in the BDS course.

Similarly, in Clause 5 of the notification, the petitioner is aggrieved against the words “in order to be eligible for admission to a Post Graduate course, it shall be necessary for a candidate to obtain minimum of 50% marks in PGET-2016 or special test”. This grievance is also based upon the alleged right of the petitioner for admitting the students in the MDS course on the basis of the marks obtained in the BDS and not on the

CWP No.779 of 2016

[ 8 ]

\*\*\*\*\*

basis of PGET-2016 or special test which has been prescribed for all the students. The petitioner is aggrieved that the seats in the Government and Private institutions have to be filled up by the centralized counselling which shall be decided by the University, whereas according to the petitioner, 50% management quota seats should have been filled by the management only on the basis of the BDS marks.

Similar is the grievance in regard to Clause 21(iv) (Note-1) and Clause 23(ii) of the notification dated 30.12.2015.

In nutshell, the grievance of the petitioner is that the 50% management quota seats in the private institutions have to be filled by the management of the respective institution and not by the University by way of centralized counselling and that too only on the basis of the individual cumulative performance in the qualifying BDS examination and not on the basis of PGET-2016.

As a matter of fact, the petitioner has tried to set up his case on the basis of Selection of Postgraduate Students provided in the Regulation in which it has been laid down that the students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit. Now, the question is as to how the academic merit is to be determined? For that matter, four procedures have been provided in the Regulations, namely, (i) on the basis of the competitive test conducted by the State; (ii) on the basis of the centralized competitive test held at the national level; (iii) on the basis of the individual cumulative performance of all the four years of the BDS examination if such examination has been



CWP No.779 of 2016

[ 9 ]

\*\*\*\*\*

passed from the same University; and (iv) with the combination of the merit determined by the competitive test conducted by the State or on the basis of the cumulative academic performance in all the four years of the BDS examination. According to the petitioner, the respondent-State has committed an error in choosing only one criteria for determining the academic merit i.e. on the basis of the competitive test conducted by the State rather it should have also adopted the criteria of the overall performance in the BDS examination *de-hors* the competitive test.

The argument raised by the counsel for the petitioner is totally misplaced because of the instructions of the DCI dated 07.05.2015, in which it has specifically directed, after taking into consideration the Regulations, referred to above, that the competitive examination is mandatory for admission in the BDS and MDS courses. The exception has been carved out in the matter of BDS course in the States having only one Dental College and one university board/examining body conducting the qualifying examination and for the MDS course on the basis of the individual cumulative performance at the first, second, third and Final BDS examinations, if such examinations have been passed from the same University, whereas it is categorically mentioned in the reply dated 18.04.2016 by the State that the Punjab State is having more than one Dental College and more than one University imparting B.D.S. Degree and hence, it is mandatory to admit students on the basis of Common Entrance Test only as per the DCI Regulations. Thus, the State has rightly taken a decision to hold PGET-2016 for all the seats in the MDS course.

CWP No.779 of 2016

[ 10 ]

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Even otherwise, it is most transparent procedure to determine the academic merit of the candidates seeking admission in the Postgraduate Course of the MDS by the competitive test conducted by the State i.e. PGET-2016.

Insofar as the grievance of the petitioner that 50% of the total seats are to be filled up by the competitive authority and remaining 50% by the management of the institution on the basis of the marks obtained in the BDS examination is concerned, the word used in the 2<sup>nd</sup> proviso, as referred to by the petitioner, is “on the basis of their academic merit” and the academic merit is to be determined as per the procedure provided in Clause 2(i) of the Selection of Postgraduate Students i.e. on the basis of the competitive test and as decided and mandated by the DCI as well, vide its letter dated 07.05.2015 and there is no violation of Section 5(4) of the Act because 50% of the total sanctioned intake has been reserved for the management category which is defined under Section 2(e) of the Act in which also it is specifically mentioned that the allocated management category seats shall be filled up by that institution in a fair and transparent manner on the basis of the *inter se* merit, determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test. Thus, it has rightly been decided by the State in terms of Section 2(e) of the Act to fill up the management category seats by the authority appointed by it i.e. the University by determining the *inter se* merit by the Common Entrance Test, to which the petitioner is bound as the Regulations are

CWP No.779 of 2016

[ 11 ]

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statutory in nature.

No other point has been raised.

In view of the aforesaid discussion, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

**May 19, 2016**  
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**(Rakesh Kumar Jain)**  
**Judge**