

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.4432-LPA of 2016 in/and
RA – LPA No.31 of 2016 (O&M) in
LPA No.1639 of 2015 in
CWP No.19896 of 2015

Date of decision: 2.12.2016

Apoorva Kalia

.... Applicant/Appellant

Versus

Baba Farid University & Ors.

.... Respondents

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Pallavi Singh, Advocate for the
applicant/appellant.

S.S. Saron, J.

The review application has been filed by the applicant/appellant Apoorva Kalia seeking review of the judgment and order dated 23.4.2016 passed by this Court in LPA No.1639 of 2015. Along with the review application CM No.4432-LPA of 2016 has been filed seeking condonation of 151 days in filing the review application.

The applicant/appellant filed Civil Writ petition No.21489 of 2015 in this Court for directing Baba Farid University of Health Sciences, Faridkot through its Registrar ('University' - for short) (respondent No.1) to consider and grant her admission to the MBBS Course against the 'Border Area Category' in terms of her Pre-Medical Entrance Test (PMET) Rank of the year 2015; besides, shift/reallocate the seats allotted to respondents No.2 to 4 in the 'Border Area Category' to General Category as they had secured more marks than the last selected candidates i.e. respondents No.5 to 7 in the General Category. The case set up by the applicant/ appellant has been that respondents No.2 to 4 who have been

granted admissions to the MBBS Course in the 'Border Area Category' were having more or higher marks than the last selected General Category candidates in the Medical Colleges in the State. Therefore, they were liable to be shifted/allocated seats in the General Category and make way for persons who had given option for the Reserved Category of Border Area in accordance with the advertisement.

The writ petition filed by the applicant/appellant was dismissed by a learned Single Judge of this Court vide order dated 2.11.2015. It was noticed that that Clause 11 of the notification that was applicable was to be followed to adjust the Reserved Category candidates in the General Category in case they were higher in merit. The said Clause 11 of the notification reads as follows:-

"11. A candidate from reserved category shall have the right to compete for admission in open merit or general category seats as per his/her merit on the day of counselling and candidate so selected will not be counted towards admission in the reserve category"

The University explained that three candidates i.e. respondents No.2 to 4 had been given admission in the 1st counselling by online process and they did not attend the last counselling held on 29/30.9.2015. Therefore, they were not shifted to the General Category. This explanation was observed to be unjustifiable in view of the aforesaid Clause 11 of the notification as referred to above. However, it was held that no relief could be granted to the applicant/appellant on account of the defence of the University that the petitioner in her 'Border Area Category' had ranked at 154 and there were about 153 students above her.

Therefore, her *locus standi* to seek admission on the basis of merit was held to be unjustifiable.

The applicant/appellant aggrieved against the said order dated 2.11.2015 passed by the learned Single Judge filed Letters Patent Appeal No.1639 of 2015, which was dismissed by this Court on 23.4.2016. It was noticed that the candidates from the 'Border Area Category' who were having more marks than the last General Category candidates would like to prefer reserved seats in the colleges of their choice.

The University had submitted an affidavit inter alia stating that due to difference in fee structure and nature of colleges, it was not possible to implement reservation on aggregate seats rather it was made on college wise basis. It was mentioned that before inviting online applications for counselling all the available were displayed college wise on the University website. The candidates gave preference of college/category/course/quota at the time of filling online application forms. It was at that particular moment that the student decided as to which college he/she would prefer. The reasons for preference had been mentioned namely that some students were financially sound and career conscious. They preferred private colleges instead of government colleges. However, some students due to financial constraints left the available open category seats in private colleges and preferred to opt for seats in the Reserved Category in Government Colleges. Besides, there was also preference amongst the Medical Colleges. The 'Border Area Category' seats were a special category and provided for horizontal reservation. The seats of 'Border Area Category' were kept reserved at Government Medical/Dental Colleges of the State only. There was one seat each at Government Medical College, Amritsar, Guru Gobind Singh Medical College, Faridkot

and Government Dental College, Patiala; besides, two seats at Government Medical College, Patiala. Once a seat was allocated to an eligible candidate as per merit and his/her choice, it could not be taken back without his/her consent.

The respondents No.2 to 4 had taken admissions in the MBBS seat in the first round of online counselling. They had joined their course/ college as per their choices. The details of the candidates who had applied for counselling in the first round and the number of seats allocated to the eligible candidates and the number of the candidates who did not join the college after provisional allocation of seats had been mentioned. The information of last candidate selected under the Open Category and 'Border Area Category' at Government Medical/Dental Colleges of the State was given:-

1ST Round of online Counselling (08.09.2015)							
General Category Candidate				Border Area Category Candidate			
Sr. No	PMET Roll No.	Name and Father's Name	PMET Marks and Overall Rank	PMET Roll No.	Name and Father's Name	PMET Marks and Overall Rank	College
1.	503881	Navi Garg d/o Sh. Gian Chand	Marks 588 Rank 139	504795	Shivam Singla s/o Sh. Naresh Gupta	Marks 588 Rank 171	Government Medical College, Patiala
				502169	Richa d/o Sh. Raj Kumar Gupta	Marks 576 Rank 293	
2.	512579	Harprinder Kaur d/o Sh. Gurmail Singh	Marks 584 Rank 203	511145	Simran Aneja d/o Sh. Vinod Aneja	Marks 575 Rank 312	Government medical College, Amritsar
3.	513560	Sahil s/o Sh. Anil Kumar	Marks 580 Rank 239	505842	Angel Dhingra s/o Sh. Anil Kumar Dhingra	Marks 572 Rank 319	Guru Gobind Singh Medical College, Faridkot.
4.	510608	Ritika Bawa d/o Kamaljit Singh	Marks 556 Rank 613	500932	Rakshands d/o Sh. Bhim Sain	Marks 555 Rank 648	Government Dental College, Patiala

In terms of the above chart, Navi Garg who is at serial No.1 from amongst the General Category students had secured 588 marks. Besides, Shivam Singla and Richa who are from the 'Border Area Category' secured 588 and 576 marks respectively but they preferred admissions in Govt. College, Patiala against which they were granted admission. In case they were to be admitted against the General Category they may not have been granted admissions at Patiala. Similarly, Harpinder Kaur at serial No.2 of the General Category secured 584 marks while Simran Aneja of the 'Border Area Category' secured 577 marks. The 'Border Area Category' candidate opted for Govt. Medical College, Amritsar and was admitted there. Sahil at serial No.3 of the General Category secured 580 marks while Angel Dhingra of the 'Border Area Category' secured 572 marks. The 'Border Area Category' candidate opted for Guru Gobind Singh Medical College, Faridkot. Ritika Bawa at serial No.4 of the General Category secured 556 marks while Rakshanda of the 'Border Area Category' secured 555 marks. The 'Border Area Category' candidate opted for Govt. Dental College, Patiala. This shows that two seats at the Govt. Medical College, Patiala and one seat at Govt. Medical College, Amritsar; besides, one seat at Guru Gobind Singh Medical College, Faridkot and one seat at Govt. Dental College, Patiala were consumed by the 'Border Area Category' candidates as per their preference. They were admittedly higher in merit than the applicant/appellant; besides, the said 'Border Area Category' candidates except for Rakshanda were higher in merit than Ritika Bawa. These students of the 'Border Area Category' candidate are not liable to be dislodged by asking them to seek admissions in the Open or General Category against their preferences. It was observed that

Clause 11 of the notification dated 30.3.2015 had been applied in a manner that not only an option is given to the reserved category students to compete for the admissions in open merit or General Category but an opportunity is also given to the Reserved Category students to exercise their preference of the Institution in which they were desirous of undergoing their course. This option was given at the time of counselling.

The applicant/appellant filed SLP (C) No.15538 of 2016 which was dismissed by the Hon'ble Supreme Court on 5.7.2016. The order dismissing the SLP reads as follows:-

“The Special Leave Petition is dismissed”

The applicant/appellant then filed Review Petition (Civil) No.3138 of 2016 in the aforesaid SLP (C) No.15538 of 2016 which was dismissed on 22.9.2016. The said order reads as under:-

“Application for directions and oral hearing are rejected.

We have carefully gone through the review petition and the connected papers. We find no merit in the review petition and the same is accordingly dismissed”.

Now, the present review application has been filed in this Court for review of the order dated 23.4.2016 passed in LPA No.1639 of 2015. It is submitted that since the SLP has been dismissed without assigning any reason; therefore, in view of the law laid down by the Supreme Court in Kunhayammed v. State of Kerala, (2000) 6 SCC 359, it cannot be said that there was any adjudication on merits of the case and as such the present review application, it is submitted, is very much maintainable. Similar view, it is submitted, has been taken by the Supreme Court in National Housing Coop. Society Ltd. v. State of Rajasthan, (2005) 12 SCC 149 and in Fuljit Kaur v. State of Punjab and others, 2010 (3) RCR (Civil)

322 (SC); besides, by this Court in Amar Singh and others v. State of Haryana and others, 2008 (2) RCR (Civil) 43 (DB) (P&H).

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the applicant/appellant and also have perused the record.

There is no dispute to the proposition that where a petition for leave to appeal is dismissed by the Hon'ble Supreme Court by non-speaking order which does not assign any reasons for dismissing the petition, it would not neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. However, in the present case, the order dated 22.9.2016 passed by the Hon'ble Supreme Court in the review petition and it is mentioned by their Lordships of the Supreme Court that they had carefully gone through the review petition and the connect papers and found no merit in the review petition. The same was accordingly dismissed.

The careful consideration by the Supreme Court of the review petition contains a statement in the order other than on points of law would be binding on the parties and also this Court whose order was under challenge on the principle of judicial discipline. This Court is not to canvass a view contrary to the one that has been taken by the Supreme Court. The Supreme Court having considered the matter against the order passed by this Court, and dismissing the SLP as also the review of the order passed in the SLP by carefully going through the review petition and the connected papers, the matter is not liable to be reopened by a fresh bout of hearing. Besides, it is a case of medical admission in which time

schedule for the year is to be adhered to. The admissions are of the year 2015 in which the applicant/appellant had sought admission. The said admission process being over, no further consideration would be required at this stage.

In the circumstances, the review petition is dismissed. The question of delay in filing the review petition is only academic and the same is also dismissed.

(S.S. Saron)
Judge

2.12.2016.
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(Shekher Dhawan)
Judge

Note:

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| (1) | Whether the order is speaking/reasoned: | Yes. |
| (2) | Whether the order is reportable : | Yes. |