

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.14155 of 2017

Date of Decision: 07.07.2017

Ruhani Arora

...Petitioner

VERSUS

Union Territory, Chandigarh & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Deepak Sabherwal, Advocate for the Petitioner.

SUDIP AHLUWALIA, J.

The Petitioner seeks quashing of Clause 2 of A-3 of eligibility criteria and admission procedure for 77 UT Chandigarh Pool Seats of MBBS Course for the Session 2017 (Annexure P-5).

2. Her case is that she has all along been a brilliant student and passed the Secondary School Examination (10th Standard) with 10.0 Cumulative Grade Point Average (CGPA) from Saupin's School, Sector 32-A, Chandigarh. Thereafter she had to change her School to S.A.S. Nagar, Mohali on account of her mother's employment there, although for all purposes, she is practically a resident of Chandigarh. She thereafter passed her 11th and 12th Standard examinations with good score/percentage in 2016, and appeared at the National Eligibility-cum-Entrance Test (under Graduates)-2017 in which, she scored 583 out of 720 marks having percentile score of 99.543522 and having NEET All India Rank of 4968 and

and category rank of 2938. She now seeks to be admitted in the MBBS Course in GMCH Sector-32, Chandigarh, but is barred despite her merit on account of the impugned Rule, which is set out as under -

“A-3): Eligibility Criteria and admission procedure for 77 UT Chandigarh Pool seats: (General Category, SC Category, Physical Disability Category)

1. The candidates must fulfill relevant General Eligibility Criteria (Page 7-8).

2. The candidates should have passed 12th standard examination (qualifying examination) from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college.”

(Emphasis applied)

3. We may mention at the outset that the settled law in this regard is in favour of the admission being on the basis of residence as well as institutional preference so long as the same is restricted only to the extent of 85% seats. In the present case, such reservation for the Union Territory of Chandigarh happens to be 77% i.e. within the permissible limits. The validity of the aforesaid reservation in the matter of admission has been expressly upheld by the Apex Court in '**Anant Madaan Vs. State of Haryana**' 1995(2) S.C.T. 449 wherein it was held as under -

“10. In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognized schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an All India basis. This eligibility criterion, therefore, is in conformity with the decisions of this Court referred to above. It cannot, therefore, be considered as arbitrary on unreasonable or violative of Article 14 of the Constitution.

13. The appellants have also cited before us some judgments of the High Courts. We need not, however, examine them since the matter is concluded by the above decisions of this Court. The

eligibility condition, therefore, which requires that the candidates should have studied 10th, 10+1 and 10+2 classes from a recognized institution in the State of Haryana is neither arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same.”

4. In '**Meenal Sharma Vs. State of Haryana**' 1994(4) S.C.T. 493, the majority in the Full Bench had similarly considered the question “*Whether the provision made in Rule (i) for limiting admission to the students who had done 10th, 10+1 and 10+2 from the institutions situated in the State of Haryana is hit by Article 14 of the Constitution in as far as it debars students who fulfil the main criterion provided for admission to the MBBS/BDS Course i.e. who are aged 17 years and more and have passed 10+2 examination from the institutions situated in Haryana or any other States ?*” by concluding -

“In the result, I agree with brother N.K. Kapoor, J. that the condition of eligibility contained in the prospectus of 1994, namely, that the candidates should have studied 10th, 10+1 and 10+2 classes as regular candidates in the recognised institutions in Haryana is constitutionally valid. The same is, therefore, upheld.....”

5. The reliance of the Petitioner however, is on two Single Bench decisions of this Court, in which the concerned Writ Petitioners were directed to be considered for admission notwithstanding the validity of the impugned Rules pertaining to admission on the basis of residence/institutional preference to the extent of 85% seats. But the reasons for such decision in those two cases were exceptional and distinguishable on facts, since the validity or otherwise of the impugned Rule had become inconsequential in either case.

6. In the case of '**Jaspreet Kaur Vs. U.T. Chandigarh & others**'

(CWP No.17587 of 2015 (O&M) decided on 29.9.2015, the Ld. Single

Judge had allowed the Writ Petition by observing-

“Without going into the question of policy, as such, in the present case, this Court is of the opinion that the petitioner is entitled for admission on the principle of promissory estoppel and in view of the maxim “actus curiae neminem gravabit” which means that no act of the Court shall prejudice a man.”

The factual background of that case was that the impugned Rule was a subject matter of challenge before this Court in CWP No.12155 of 2014 titled “Ms. Akanksha Mehra Vs. Secretary, Department of Medical Education & Research, Chandigarh Administration & others,” decided on 16.09.2014 (Annexure P10), wherein this Court had struck down the policy prospectively, on the ground that it was wholly arbitrary and that the passing of 12th standard requirement from Chandigarh was not a valid criteria. At that time, the petitioner filled in her preference for Chandigarh in the prospectus for the AIPMT, 2015 on 05.12.2014. The judgment of the Learned Single Judge had not been stayed and it is on that basis, she had applied, at that point of time. Because the policy itself had been struck down and an appeal was preferred against the said decision by the Administration bearing LPA No.129 of 2015, only in the year 2015, the stay was granted by the Division Bench on 03.03.2015. By that time, the petitioner had already altered her position and applied for admission on the strength of the 10+2 policy, which stood struck down by this Court and therefore, on the basis of the legitimate expectation, sought to take admission on account of the non-existing bar, at that point of time.

Eventually the Letters Patents Appeal was disposed of as having been rendered infructuous, on account of the fact that counsel for the respondent-Ms.Akanksha Mehra, in that case, made a statement that the said student was not seeking admission in the respondent-college. Relevant portion of the Division Bench judgment dated 24.08.2015, noting the concession of the counsel for the said candidate reads as under:

“According to learned counsel appearing for the respondent Ms. Akanksha Mehra, the letter patents appeal has in fact become infructuous as the respondent is not now

seeking admission in the Medical College in Chandigarh or taking any benefit on the basis of the impugned judgment dated 16.9.2014 passed by the learned Single Judge of this Court.”

In such circumstances, the Letters Patents Bench did not decide the issue on merits and left it open for this Court to examine, since it was brought to the notice of the Division Bench that the present matter was again pending before this Court.

In such circumstances, once the petitioner had altered her position and would be seriously prejudiced, this Court is of the opinion that in view of the peculiar facts and circumstances, she is held entitled for admission in the respondent-college, on account of her right, at that point of time, she had applied.”

7. Similarly, in the other Single Bench decision of this Court being **'Geetika Vs. State of Punjab and others' (C.W.P.No.17852 of 2013)** **decided on 21.12.2013**, the subsequent imposition of conditions which were not spelt out when the concerned applicant (who incidentally was from the State of Punjab) had submitted her application with preferential option. The Ld. Single Judge therefore, decided the matter in favour of the candidate by observing -

“It is not in dispute that admissions to the MBBS/BDS Courses in the government/private/aided/unaided colleges of the State of Punjab are based upon the rank obtained in the NEET-UG-2013 examination. NEET-UG-2013 examination was conducted by the CBSE. Ranks of the candidates on the basis of their percentile score were prepared for All India quota, AFMC quota and State quota seats. The candidates were required to give their preferences for the State quota seats. The CBSE prepared not only the rank of a candidate in the preferred States but also in the category, namely, General, Scheduled Castes and Scheduled Tribes etc. For example, in the case of Geetika, while filling up her online form for the NEET-UG-2013, she had filled up her preference for the State quota seats only for the State of Punjab. Accordingly, the CBSE indicated her rank on the basis of her percentile score amongst the students who

had given their preference for the State quota seat in the State of Punjab. The said candidate, for the purpose of taking admission in the colleges of the State of Punjab, had to rely upon her rank of NEET-UG-2013 and to compete with other candidates who had also made preference for the State quota seat in the State of Punjab. At the time when the form was filled up, the candidates were not aware that there would be institutional preference in the matter of admission in the State of Punjab based upon their qualifying 10+2 examination from a school located in Punjab only. Had it been known to them before filling up the form of NEET-UG-2013 examination, candidates like Geetika would not have made only one preference for the State quota seats and would have opted for some other States because in that situation she would not have been eligible at all for a seat in the State of Punjab as she had done her 10+2 qualifying examination from Bangalore. In this manner, since there is no other preference by her in the NEETUG-2013 form with regard to any other State, the CBSE has not prepared her State rank for any other State, therefore, the candidates like Geetika would not get admission anywhere and her entire effort would have to go waste.

There is another aspect to look in this matter. Supposing a candidate made a preference of 2 States including the State of Punjab but he/she has passed his/her qualifying examination of 10+2 from an institution outside the State of Punjab, according to notification 05.06.2013, he/she would not be eligible to take admission in the State of Punjab and in that situation one of his/her preferences would simply become redundant and possibly if he/she had filled up preference of another State of which he/she is not the domicile, then such a student may not be given admission in that State also. In that manner also, the student would be left without any chance to get admission in the 85% State quota seats only because of the reason that notification has been issued making institutional preference on the day when the NEET-UG-2013 result was declared.

It is not disputed by the respondents that the criteria for admission made known by notification dated 05.06.2013 was simultaneous to the declaration of result of NEET-UG-2013 examination and by that time, there was not even a whisper by the respondents that a candidate, though a domicile of Punjab, was also

required to have passed his/her 10+2 qualifying examination from an institution in the State of Punjab for the purpose of being eligible to apply for admission on the basis of his/her rank determined by the CBSE in the State quota preference of the State of Punjab.

In my considered opinion, this kind of notification should have been issued by the respondents even before filling up the forms for NEET examination so that the candidates should have known before hand that they would not be eligible to apply for admission in the State of Punjab even if they acquire a high rank in their own State quota. Thus, Clause 14 of the notification dated 05.06.2013, which debars the candidates for seeking admission in the State of Punjab on the ground that they had not passed 10+2 qualifying examination from an institute in the State of Punjab, is unreasonable, arbitrary and violative of Article 14 of the Constitution of India insofar as the present petitioners are concerned. The condition enumerated in Clause 14 of the notification dated 05.06.2013 may apply in future but would not apply to the petitioners.”

(Emphasis added)

8. It is therefore, clear that even in the two decisions relied upon by the Petitioner there is actually no adverse observation on the Rule *per se*, but the same was otherwise found to be inapplicable to the concerned Petitioners on account of distinct and peculiar facts inasmuch as in one case, the Rule stood temporarily struck down *al beit* only by a Single Bench at the relevant time when the Petitioner had submitted her application with option, and in the other cases, there was no reference to the institutional preference in the matter of admission when the form was filled up by the concerned Petitioner, who if aware of the same at that time could have opted for admission in any other State where she would have been so eligible.

9. But in the matter before us, there is no case whatsoever to the effect that the Petitioner was not aware about existence of the impugned Rule, which has been clearly mentioned in the Prospectus for the Session 2017

(Annexure P-5), and of which she is therefore, presumed to have been aware before submitting her application with option. Needless to add, the validity of the Rule has already been upheld by the Apex Court and this Court in the citations mentioned earlier.

10. For the aforesaid reasons, we find no merit in the present Writ Petition which is accordingly dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

07.07.2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***