

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.20437 of 2017.

Date of Decision: October 10, 2017

Vishavjeet Kaur

.....Petitioner

versus

Baba Farid University of Health Sciences, Faridkot and ors ...Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.**

Present: Mr.Vikas Bali, Advocate, for the petitioner.
Mr.Manish Dadwal, Advocate, for respondent No.1.
Mr.O.S.Batalvi, Advocate, for respondent No.4.
Mr.R.S.Ghera, Advocate, for respondent No.5.

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Surya Kant, J. (Oral)

The question which arises for consideration in this case is whether the petitioner has been unfairly denied admission to the MBBS Course in Shri Guru Ram Das Institute of Medical Sciences & Research, Amritsar against a seat reserved for the Scheduled Caste Category?

[2] The facts may be noticed briefly.

[3] The petitioner belongs to the reserved category of Scheduled Caste and is a resident of State of Punjab. She appeared in the National Eligibility-cum-Entrance Test (for short, 'NEET')-2017 wherein she secured 305 marks and her all India rank was 168660. Respondent Nos.4 & 5 also belong to the reserved category of Scheduled Caste. They too appeared in NEET, 2017 and their score was 291 and 277 and their all India ranks were 185582 and 203850, respectively. Both the private-respondents were thus placed lower in merit than the petitioner in NEET-2017.

Punjab were conducted by Baba Farid University of Health Sciences, Faridkot-respondent No.1. The candidates were required to apply online and the counseling was also conducted online. The petitioner applied to respondent No.1-University for admission to MBBS Course and gave option for 32 Medical Colleges. She, however, did not get admission in MBBS Course in the first and second counseling being lower in merit in the reserved category. In the second online counseling held on 18.08.2017, the petitioner's turn came for BDS Course which she accepted. She was provisionally admitted on 21.08.2017 and allocated to Shri Guru Ram Das Institute of Dental Sciences and Research, Amritsar.

[5] The last cut-off date for admissions to MBBS and BDS Courses expired on 31.08.2017 and till that date, the petitioner's turn for a seat in MBBS Course did not come as per her merit in the reserved category. Respondent Nos.4 & 5 being far lower in merit did not get admission either in MBBS or BDS Course till the expiry of the last cut-off date.

[6] It appears that some seats in MBBS/BDS Courses remained unfilled in the States of Punjab and Haryana due to law and order problem. Both the States, therefore, applied to Hon'ble Supreme Court for extension of time for counseling. Their applications were allowed by the Apex Court vide order dated 01.09.2017, which reads as follows:-

“.....Upon hearing the counsel, the Court made the following

ORDER

Heard Mr.K.K.Venugopal, learned Attorney General for the State of Punjab, Mr.Alok Sangwan, learned Additional Advocate General for the State of Haryana and Mr.Gaurav Sharma, learned counsel for the Medical Council of India.

It is submitted by Mr.K.K.Venugopal, learned Attorney General, that due to law and order problem and other disturbances, counselling could not be held. It is submitted by him that the students of Punjab and Haryana are affected by the said situation. The same argument is advanced by Mr.Alok Sangwan, learned Additional Advocate General for the State of Haryana.

Having heard learned counsel for the parties and regard being had to the special circumstances, we extend the time for counselling till 07.09.2017. The extended time shall be applicable for both the States, namely, Punjab and Haryana. Be it clarified that no other State or student shall get the benefit of extension of time for counseling.

MA No.778 of 2017 is disposed of accordingly.....”

[7] Consequent upon the extension of time for counseling till 07.09.2017, Baba Farid University of Health Sciences and Research, Faridkot issued the following public notice on 03.09.2017 (P-9):-

“Baba Farid University of Health Sciences, Faridkot.

Walk-in-Physical Counseling for Left Over MBBS/BDS Seats-2017.

For MBBS: For left over seats of MBBS course (i.e. left over after the Mop Up Round of Counseling), eligible NEET qualified candidates from all the States of India, including Punjab, are invited for Walk-in-Physical Counseling at Auditorium, Guru Gobind Singh Medical College, Faridkot on 04.09.2017 upto 11.00 a.m. The seats will be allocated according to the NEET merit of the eligible candidates. Candidates have to deposit bank demand draft for tuition fee in favour of Registrar, BFUHS, payable at Faridkot and show original documents at the Counseling venue. The fee shall be equal to the amount as per the fee of the allocated college.

For BDS: Similarly, eligible NEET qualified candidates from all the States of India, including Punjab are invited for Walk-in-Physical counseling at Guru Gobind Singh Medical College, Faridkot on 06.09.2017 at 9.00 a.m. Rest terms and conditions are same as mentioned above. The fee structure of the respective colleges/Institutions is available on University website. Application form/fee towards fresh registration for sum of Rs.3000/- in the shape of DD in favour of Registrar, BFUHS, Faridkot will be collected on the spot. Candidates who have joined their allocated colleges in any State including Punjab upto 31.08.2017 are not eligible to participate.....”

(emphasis by us)

[8] The petitioner immediately deposited the requisite counseling fee on 04.09.2017 (P-10) as she wanted to take a chance for admission to MBBS Course. The respondent No.1-University, however, turned down her claim on the premise that she was ineligible to seek admission to MBBS Course since she had taken admission in the BDS Course. Resultantly, two seats reserved for Scheduled Caste Category candidates in MBBS Course were offered to respondent Nos.4 and 5.

[9] The aggrieved petitioner immediately approached this Court on 06.09.2017.

[10] The respondents have filed their reply-affidavits.

[11] We have heard learned counsel for the parties with reference to the question formulated in the opening paragraph of this order.

[12] It is reiterated on behalf of the respondent No.1-University as well as private respondents that once the petitioner had opted for BDS Course, she incurred ineligibility in terms of the public notice dated 03.09.2017, reproduced in para [7] of this order, and she was rightly denied

admission to MBBS Course.

[13] Having given our thoughtful consideration to the afore-said contention, we do not find any merit therein. We say so for the reason that in the public notice dated 03.09.2017 (P-9), firstly no condition was imposed for admission to MBBS Course that the candidates who have joined their allocated colleges in any State including Punjab, up to 31.08.2017, are not eligible to participate in the walk-in-physical counseling. Such condition was imposed only for admission to the BDS Course only. It is a matter of common knowledge that BDS is perceived to be an inferior course as compared to MBBS course and first choice of an aspirant is invariably for MBBS Course only. The University consciously did not impose the condition as the left over seats to MBBS Course were required to be offered strictly in order of merit, irrespective of the fact that a candidate had already joined the BDS Course. The option exercised by a candidate for an inferior course, for want of a seat in MBBS course as per his/her merit, can neither be invoked as an estoppel nor as a cloak to deny admission as per the NEET merit. There is no gain saying that vacant seats in walk-in-physical counseling were also required to be offered in order of merit. No candidate in Scheduled Caste category higher in merit than the petitioner came forward to seek admission. The petitioner applied for walk-in-physical counseling and sought admission in MBBS Course as per her merit. The denial of admission to her only because she had already got admission in BDS Course, in our considered view, is totally arbitrary and offends Article 14 of the Constitution.

[14] The condition that the candidates who have been allotted the Colleges upto 31.08.2017 were not eligible to participate in walk-in-

physical counseling, has been inserted only under the head “For BDS” and not under the head “For MBBS” Course in the public notice reproduced in Para-7 of this order.

[15] Still further, the stipulation in the public notice dated 03.09.2017 to disqualify a candidate who has already got admission in a Course as imposed by the University is directly in conflict with the provisions contained in PROSPECTUS FOR ADMISSION TO MBBS/BDS COURSES SESSIONS-2017. The Prospectus, under the heading “Procedure of Online Counseling and Joining at the Colleges” unequivocally provides that : “if candidate is satisfied with seat allocated to him/her during online counseling, he/she is not required to participate in the subsequent round of counselings. In case, candidate wants to upgrade/change his/her seat, he/she will have to participate in the subsequent round of counseling and give their preferences afresh for the course/college/category/quote....”

[16] Once the respondent-University has laid down a complete procedure in the Prospectus which includes giving an opportunity to a candidate to seek upgradation and change of his/her seat through participation in the subsequent round of counseling and by giving preferences afresh for course/college/category/quota, the University cannot abruptly change such notified criteria and take a somersault.

[17] Assuming that the condition to render a candidate ineligible who had got admission upto 31.08.2017 was applicable qua the seats in MBBS Course also, yet it appears that the said condition has been totally misconstrued by the University for denying admission to the petitioner. The said condition merely prohibits the reshuffling of allocated colleges. To say it differently, if a student was admitted to MBBS Course in a private

Medical University/College, the subject condition did not permit such student to seek re-allocation from private Medical College to Government Medical College even if a seat was available in the later college. The condition in question cannot be stretched to say that a student who had gotten admission in an inferior Course would not be eligible to seek admission as per his/her choice in the superior course regardless of his/her merit in NEET-2017. Such a construction of the condition in dispute would lead to arbitrary consequences as it being detrimental to the principle of merit and would rather be a bonanza for those placed lower in merit.

[18] The illogical consequence of the stand taken by the respondents is that the candidates lower in merit like respondent No.4 & 5, who did not get admission even in BDS Course till the last cut off date, have succeeded in getting admission to MBBS Course, whereas a candidate who is higher in merit and who participated in all the counselings is being denied what is legitimately due to her as per merit in NEET-2017. The action of respondent No.1-University thus is wholly unfair, unjust and inequitable.

[19] For the reasons afore-stated, the writ petition is allowed and action of the respondent No.1-University in denying admission to the petitioner to MBBS Course is set-aside. It is directed that the petitioner be forthwith shifted to MBBS Course in Shri Guru Ram Das Institute of Medical Sciences and Research, Amritsar and for this purpose the admission of respondent No.5, being lower in merit, be cancelled, if need be. However, the resultant seat to be vacated by the petitioner in BDS Course in Shri Guru Ram Das Institute of Dental Sciences and Research, Amritsar, may be offered to respondent No.5.

[20] Let the needful be done within a period of one week from the date of receiving a certified copy of this order.

[21] Dasti.

[SURYA KANT]
JUDGE

October 10, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

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

CWP No.20437 of 2017

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Mr.O.S.Batalvi, Advocate, for respondent No.4.
Mr.R.S.Ghera, Advocate, for respondent No.5.

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Short-reply-cum-affidavit of respondent No.4, filed in Court
today, is taken on record.

(SURYA KANT)
JUDGE

October 10, 2017
mohinder

(SUDHIR MITTAL)
JUDGE